

## **Chapter 36 Clarification of Covered Position for Membership Purposes**

### **100 Purpose**

The purpose of this regulation is to clarify which employees are eligible for coverage in the retirement system.

### **101 Covered position**

Participation in the Public Employees' Retirement System is limited to eligible employees who occupy a covered position with a qualifying governmental entity. Miss. Code Ann. § 25-11-103(s) (1972, as amended) defines "position" as any office or any employment in the state service or two (2) or more of them, the duties of which call for services to be rendered by one (1) person, including positions jointly employed by federal and state agencies administering federal and state funds. Effective July 1, 1999, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System provided the employee occupies a position that would otherwise be covered if the employee worked and was paid for a sufficient number of hours as set forth below.

### **102 Covered employee**

1. In order to participate in the Public Employees' Retirement System an individual must be an employee in a covered position subject to the control of the covered public employer as defined in IRS guidelines and must satisfy the following requirements:
  - a. Be properly classified as an employee;
  - b. Have compensation properly reported on IRS Form W-2;
  - c. Be paid regular periodic compensation; and
  - d. Be treated as an employee for all purposes, including but not limited to eligibility for fringe benefits, payment of employment related expenses, payroll tax withholding, etc.
2. For purposes of eligibility for participation in the Retirement System, a position means any position in which the employee personally performs services and receives compensation for not less than 20 hours per week or a total of 80 hours per month, or in which school personnel personally perform services and receives compensation for half-time or more for the academic year. Except as otherwise provided by law, no creditable service shall be allowed for service when the employee is not paid for at least 20 hours service per week or for a total of 80 hours per month. However, elected officials not excluded by a joinder agreement or by law who are compensated on an annual

or monthly salary shall be deemed to be full-time employees in a covered position.

3. Any person whose employment is anticipated to exceed 4 and 1/2 months shall be covered, whether probationary or otherwise.

**103 Temporary or intermittent employment not eligible for retirement coverage.** Persons whose employment is temporary in nature or which is intermittent and who are not employed at least 4 and ½ consecutive months ~~in a state fiscal year~~ shall not be in a covered position, and shall not be covered by the Retirement System. However, this limitation shall not apply to any individual who is already in a covered position under PERS either with the same or another covered agency. Note also, that any employee engaged on a day-to day basis to replace another employee who is temporarily absent shall be considered a “substitute” in temporary and intermittent employment and shall not be covered under PERS. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a “substitute” if such employment is for a period of 4 and ½ consecutive months or longer and therefore must be covered under PERS.

**104 Work requirement exception for members employed as of July 1, 1992.** Effective July 1, 1992, any employee employed in a position in which he or she received compensation for less than 20 hours per week or a total of 80 hours per month, or in which school personnel receive compensation for less than half-time for the academic year, shall not be, or become a member, except that any active member employed in such position on July 1, 1992 may continue as an active member so long as they are employed in such position.

**105 Work requirement exception for members performing professional services.** Any active member employed on July 1, 2002, by a covered governmental entity to perform professional services and who participates in PERS based on the performance of such services will continue to be an active member for as long as he or she is employed in such position.

**(History: Adopted December 17, 1991; amended effective July 1, 1999; amended effective July 1, 2002; amended June 21, 2005 to be effective August 1, 2005; reformatted and amended August 1, 2007)**