Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

Chapter 36: Eligibility for Membership in the Public Employees' Retirement System of Mississippi (PERS)

100 Purpose

This regulation clarifies which employees are eligible for coverage and membership service credit in the Public Employees' Retirement System of Mississippi (PERS).

101 Definitions

1. Definition of "Position"
   Participation in PERS 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 or more of them, the duties of which call for services to be rendered by one person, including positions jointly employed by federal and state agencies administering federal and state funds.
2. Definition of "Employee"
   "Employee" means any person legally occupying a position in state service and includes the employees of the retirement system. An employee is a person in the service of another where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. Only employees are eligible for membership in PERS.
3. Definition of Independent Contractor
   An independent contractor is one, who in the exercise of independent employment, contracts to do a piece of work according to his or her own methods and is subject to his or her employer's control only as to the end product or final result of his or her work. An independent contractor is not eligible for membership in PERS.
4. Definition of "Employer"
   "Employer" means the State of Mississippi or any of its departments, agencies, political subdivisions, or instrumentalities from which any employee receives his or her compensation.
5. Definition of "State Service"
   "State Service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state that elects to participate in PERS by way of joinder agreement in accordance with Miss. Code Ann. § 25-11-105(f) (1972, as amended), including the position of elected fee officials of the counties and their deputies and employees performing public services and any department, independent agency, board or commission, and also including all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools.

102 Eligibility for PERS membership

1. To participate in PERS an individual must be an employee in a covered position with a covered employer and subject to the control of the covered employer as defined in Internal Revenue Service (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, *Wage and Tax Statement*;
   c. Be paid regular periodic compensation (whether hourly, daily, weekly, or monthly); and
   d. Be treated as an employee for all general purposes, including, but not limited to, eligibility for fringe benefits, payment of employment-related expenses, payroll tax withholding, etc.

103 Eligibility for Membership Service Credit

1. To receive service credit for any month, a member must be employed in a position in which the employee works the equivalent of at least half the normal workload for the position and earns at least half the normal compensation for the position in any month. Reference PERS Board Regulation 25, *Eligibility of Part-time Employees for State Retirement Annuity Service Credit*.
2. Any person who works half time or more based on a full-time equivalent position and whose employment is anticipated to exceed four and one-half consecutive months shall be covered, whether probationary or otherwise.
   a. Requirements for general, non-elected employees
      i. For non-elected, non-school employees and school employees where the full-time equivalent workload is based on 40 hours per week, creditable service is only allowed for employment in a position in which the employee performs services and receives compensation for not less than 20 hours per week or a total of 80 hours per month. 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 of service per week or for a total of 80 hours per month.
      ii. For non-elected school employees where the full-time equivalent workload is based on 35 hours per week, creditable service is only allowed for employment in a position in which the employee performs services and receives compensation for not less than 17.5 hours per week or a total of 70 hours per month.
      iii. For school employees employed pursuant to a contract, the employee must substantially complete the legal school term in order to receive credit for a full year of service. “Substantial completion of the legal school term” is defined as the employee completing the full school term and receiving at least 11/12th (91.67 percent) of the contract salary for the full school term.
   b. Requirements for elected officials
      State-wide and district-wide elected officials and local elected officials, including fee-paid 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 eligible for membership service credit.

104 Positions excluded from coverage

1. An appointed or elected official compensated solely on a per diem basis is not eligible for membership in PERS and thus not eligible for membership service credit. This includes school board members who are specifically excluded from PERS membership pursuant to Miss. Code Ann. § 37-6-13 (1972, as amended) and who may elect to receive either a per diem or a monthly salary.
2. Employees whose positions are excluded from coverage by way of a joinder agreement are not eligible for membership in PERS and thus not eligible for membership service credit.
3. Students of any state educational institution employed by any agency of the State for temporary, part-time, or intermittent work as described in PERS Board Regulation 37, *Eligibility of Student Employees for Membership in Retirement Annuity Coverage*, are not eligible for membership in PERS and thus not eligible for membership service credit.
4. Patients or inmate help who work in state charitable, penal, or correctional institutions are not eligible for membership in PERS and thus not eligible for membership service credit.
5. Persons whose employment is temporary or intermittent in nature and who are not employed at least four and one-half consecutive months shall not be in a covered position and shall not be covered by PERS. 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.
6. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a substitute employee serving 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 employee if such employment is for a period of four and one-half consecutive months or longer and therefore must be covered under PERS.
7. Contract personnel employed by state agencies pursuant to the authority granted under Miss. Code Ann. § 25-9-120(1) (1972, as amended) are specifically excluded by law from participation in PERS.

105 Effect of Dual Employment on Reportable Earnings and Membership Service Credit

1. Effective July 1, 1999, any member in a covered position, as defined by PERS laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to PERS 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 in this regulation. The wages from the second position are reportable to PERS if the second position is independently covered under PERS or if the second position is less than half time, but would otherwise be covered independently if the employee worked the requisite number of hours.

2. PERS law provides that not more than one year of service is creditable for all services rendered in any one fiscal year. Where a member holds two or more covered positions simultaneously, as defined in this section, PERS can grant creditable service, including membership service credit and credit for unused leave, on only one such position. A member may be covered in two positions with two different employers where both employers provide leave benefits. While the wages of both covered positions are required to be reported to PERS, no more than one year of service credit will be granted during the year regardless of the number of positions held. In addition, upon retirement, PERS can grant additional retirement service credit for accumulated unused leave from only one position.
3. Where a position is expressly excluded by law or where the position is expressly excluded by joinder agreement, wages from the second expressly excluded position shall not be reported to PERS. In no case should compensation paid to an individual as an independent contractor be reported to PERS.

106 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 receives 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 he or she is employed in such position.

107 Work requirement exception for members performing professional services

Any active member employed on July 1, 2002, by a covered employer 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. This provision applies to an individual, not a firm of individuals, employed as an employee on a regular basis to provide professional services, such as legal or engineering services, to a participating employer. Determination of coverage eligibility is first subject to the authority of the employer to employ such professional. If the employer has the authority to employ the professional in a state service position as defined in Section 101.5 of this regulation and if the professional is determined to be an employee by using the guidelines expressed by the IRS, the professional hired on or after July 1, 2002, is subject to the same participation criteria, including the prerequisite minimum number of hours worked and compensation received, as any other employee.

108 Determination of Employee Status

The employer has the responsibility for the proper employment classification of an individual as an employee or independent contractor. PERS uses the guidelines published by the IRS as reflected in Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, for determining worker status. If, based on the facts, it is determined that an employer has made an error in classification, PERS will require the employer to correct any reporting error resulting from the misclassification.

109 Members of Boards and Commissions

Members of boards and commissions of various state departments or agencies or commissions who are paid a stipulated monthly salary for their services are considered as employees in state service for purposes of coverage under PERS unless the position is specifically excluded by law or joinder agreement. Conversely, members of boards and commission who are paid solely on a per diem and expense basis are not considered as in state service within the meaning of this term as it applies to employment of the state. Reference PERS Board Regulation 6, *Coverage of Members of Boards and Commissions*.

(History of PERS Board Regulation 36: 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; clarified effective August 1, 2011; amended effective August 1, 2013)

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