



Board of County Commissioners - Staff Report

Meeting Date: March 5, 2019

Presenter: Julianne Fries

Submitting Dept: Human Resources

Subject: TC HR Policy: Rehired Retirees

Statement / Purpose:

Consideration of a policy that defines the position of the County as it relates to the Wyoming Retirement System (WRS) rules for the Rehired Retiree Program.

Background / Description (Pros & Cons):

This policy is being presented to help clarify the intent of the WRS Rehired Retiree program, which originates from IRS guidelines and is the intent of the Wyoming Retirement System, and further outlines the county's position on employee participation in a rehired/retiree pension program. The basic meaning of 'retirement' or 'separation from service', according to WRS and the IRS, is to have a bona fide termination of employment in which the employer/employee relationship is completely severed. It is not intended to allow an employee to retire 'in-place'; in other words, continue working for the same employer while drawing from a retirement pension. The IRS cautions against 'sham' retirements – an employee who attempts to gain access to a pension benefit while continuing to work for the same employer. The IRS expects an employer to take steps to ensure that benefits are paid only after a bona fide retirement.

Discussions with WRS General Counsel further explained the intent of the WRS rules, *Chapter 12 Reemployment of a Retiree*. The WRS outlines four rules that must be followed to support a bona fide break in service and protect the actuarial integrity of the System. In order to satisfy the IRS requirements, a legitimate termination of employment occurs when (a) the employee has severed the employment relationships with all employers within a particular plan and the System has received all applicable termination notifications; (b) the employee has not resumed the employment relationship with an employer; (c) the employer and the employee did not have an agreement, whether formal or informal, prior to the employee's retirement date indicating they would become reemployed; and (d) the employer and employee reasonably did not anticipate that the employee would perform any further services for the employer subsequent to the employee's retirement date. When an employer and an employee have an agreement for the employee to return to work after satisfying the statutory requirements of the provision (30 days), without properly noticing the position and with no real intent by the employee to stop working, it is possible that the IRS would view that agreement as equivalent of retiring in place.

If a bona fide break in service did not occur, the WRS will cancel a retired member's benefit and reinstate the member as a contributing member of the system retroactive to the member's retirement date. The only exception is when the Rehire Retiree program is beneficial to the employer. WRS allows the Employer (not the employee) to make an exception to these rules only when the employer is unable to fill a position with other qualified applicants because the qualifications are such that the Employer has no other options and uses the Rehire Retiree program to entice an employee to come out of retirement to fill a position.

The WRS instituted these rules in 2015 to avoid the situation in which employees might inappropriately benefit from loopholes in the existing rules, while still allowing an employer to make an exception in rare circumstances.

It is most important to recognize that WRS views the rehired-retiree provision as a tool for employers that are unable to fill critical positions, not as a benefit to members to bolster their income.

This policy establishes the County's position for an employee who wishes to return to work in a position covered under the same retirement plan in which the employee is retired and continuing to receive a monthly pension benefit. If an employee wishes to become re-employed by the County under the same plan, the



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employee must discontinue their monthly pension benefit and be reinstated as a contributing member of the WRS, continuing to earn service credit. In defining a minimum 365-day break in service, the County attempts to define a reasonable length of time to establish a 'bona fide break in service'. In addition, if a department or office has made a robust external recruitment effort to fill the vacancy, producing no viable qualified candidates, an exception may be granted. This additional provision establishes that the Rehire Retiree program is beneficial to the employer, which follows the intent of the rule.

Fiscal Impact:

If an employee is hired as a 'rehired retiree' and continues to receive their pension benefits, the County is required to pay into the System an amount equal to both the member's and employer's contributions.

- Law Enforcement Plan= a total of 17.2%
- Fire Plan B = 21.245%
- Public Plan = 16.62% of employee's salary.

The employee has no cost burden and does not receive increased retirement benefits from the contribution payments.

Staff Impact:

Not Applicable

Legal Review:

K. Gingery has provided legal review of the policy when previously presented to the Board in 2018.

Staff Input / Recommendation:

Staff recommends approval of the policy.

Attachments:

Draft Rehired Retiree Policy.

Suggested Motion:

I move to approve adoption of the Teton County Human Resources Rehired Retiree policy, effective immediately.

Purpose

This policy complies with Wyoming Retirement System reemployment of a Retiree rules, under the “rehired retiree” provisions, to retirees of the Public Employee, Law Enforcement, and Fire Plan B plans. It further establishes County policy for a retired member who returns to work in a position covered under the same plan in which the member retired.

I. Policy Statement

Employees who retire from Teton County, and are eligible for a Wyoming Retirement benefit, and wish to continue to receive their retirement benefit while working in a position covered under the same plan, may be considered, along with other qualified applicants, for positions for which they are qualified, after a period of not less than 365 days from the effective date of their retirement. This provision is designed to emphasize and establish when a bona fide Break in Service has occurred.

In circumstances where robust efforts to recruit external applicants have failed to generate qualified applicants, and the department or office is not able to fill the vacant position with a ‘regular contributing employee’, an exception may be made to allow a retiree, with less than 365 days of separation, to return to work in the same plan and maintain their retirement benefit. This exception may be granted by the HR Director after demonstrating that at least two external job advertisements have been placed and the recruitment results from each effort. For positions under the purview of an Elected Officials, the Elected Official may opt to request a review by the Board of County Commissioners. This provision is to ensure that retirees are not hired solely due to interest of ‘retiring in place’ or ease of availability to the department or office and ensure that the laudable purposes of the Rehired Retiree provisions are not abused.

An employee is not considered to be “retired” if a pre-existing arrangement to return to work, or any promise of future employment exists with the employee’s supervisor, manager, department director, or elected official at the time of the employee’s retirement. Furthermore, neither the employee nor the County may anticipate that the employee, upon retiring, will perform any further services for Teton County subsequent to the employee’s retirement date.

II. Definitions

- A. “Retired Employee” means a member of the Wyoming Retirement System who has terminated his/her working career for a salary as an employee of Teton County and fulfilled the requirements for eligibility to receive a retirement benefit.
- B. “Rehired Retiree” means a Retired Employee who becomes re-employed by Teton County into a vacant, full-time position within the same pension plan in which the retirement benefit of the Retired Employee is based.

III. Exceptions

- A. An employee who retires from one plan and returns to work in another plan is not considered a rehired retiree; the employee would be considered a new hire and would be treated as such.
- B. Employees who retire and run for an elected office, and are successful in their election to office, would be an exception to this policy.
- C. An employee who retires and is rehired into the same plan, but elects to discontinue their monthly retirement benefit and be reinstated as a contributing member of WRS.

IV. References

- A. W.S. § 9-3-415