

BACKGROUND SUMMARY FOR PROPOSED CHAPTER 338 AMENDMENT
(SB 634)

The proposed technical amendment to ORS Chapter 338 is designed to protect a small group of public education employees not covered by S.B. 201 (2017 Oregon Laws Ch. 642). That language became law in August 2017.

Policy Behind S.B. 201

S.B. 201 was proposed by the seven universities in the Oregon University System to address an unanticipated consequence of employing educators to teach online classes. Because lessons and classroom material are delivered online, the instructor can be located out-of-state. Because such public employees are not considered to earn income in Oregon, they do not pay Oregon income tax on earnings from this work. Oregon statutes provide earnings not subject to income tax cannot be considered a basis for contributions to either the OPSRP Pension Program or the OPSRP IAP Program (see ORS 238A.005(17) and Example 2 in the attached PERS Employer Announcement #92). In short, such salaries by law do not count for determining whether and in what amount PERS contributions are made.

S.B. 201 Solved the Issue for the Public Universities but not the Public Charter Schools

Two discrete groups of public education employees and their public entity employers have been affected by this issue because two groups of public employers represented to their out-of-state virtual education employees that they and their salaries were PERS eligible: (1) the seven state public universities; and (2) some public charter schools. The proposed amendment to Chapter 338 addresses PERS contributions made by and for educators who were employed by public charter schools but earned their salaries while physically working outside of Oregon (and were informed they were PERS eligible) by treating salaries earned by these public education employees as subject to Oregon state income tax for purposes of PERS eligibility .

The Proposed Bill is a Narrower Version of S.B. 201 and Extends S.B. 201 to Public Charter Schools

With a single exception, this proposed amendment is a carbon copy of S.B. 201 from the 2017 session. The exception is the addition of narrowing language which requires a written representation by the public employer that the employee was eligible for PERS and requires that the public employer did in fact make PERS contributions for the employee. This proposed amendment to Chapter 338 will address and fix for public charter schools and their affected public education employees the same problem which S.B. 201 addressed and fixed for Oregon's seven public universities and their affected public education employees in the 2017 session.



Employer Announcement #92 Salary Not Includable as Taxable Income and OPSRP Benefits

Under PERS statutes, eligible employees of PERS participating employers may establish membership in OPSRP Pension and IAP Programs. Once membership is established the active member may be eligible for retirement benefits based upon the salary paid to them as an active member, to the extent the salary is includable in the employee's taxable income under Oregon law.

General Membership Requirements

An eligible employee must establish OPSRP membership to qualify for OPSRP Pension benefits, and to establish an IAP account. OPSRP membership is established by:

- being an "eligible employee,"
- working in a "qualifying" position for a PERS-participating employer,
- completing a waiting period consisting of six full months of service performed in period of qualifying service with one employer with no break greater than 30 working days, and
- continuing the employer-employee relationship with the same waiting time PERS-participating employer past the end of the waiting time.

General Salary Requirements

The wages paid by the PERS participating employer must qualify as "salary" for PERS purposes as defined in ORS 238A.005(17)(a), which provides:

"Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law.

Unless specifically included under ORS 238A.005(17)(b), only compensation that is taxable in the state of Oregon and paid by a PERS employer during a period of qualifying service would be considered as a basis for PERS contributions for the OPSRP Pension Program or the OPSRP IAP, and as a basis for "final average salary" for purposes of computation of pension program retirement benefits. Salary that is not includable in the employee's taxable income under Oregon law is "Non-Subject Salary" for PERS purposes.

Example 1: Maria is a Spanish citizen working in Madrid, Spain, on behalf of the University of Oregon foreign academic exchange program in Spain. Maria performs all of her work duties in Spain. Maria is not subject to income tax under Oregon law for the wages she receives from the

University of Oregon; therefore, Maria does not have subject salary for PERS purposes under OPSRP.

Example 2: David is a full-time resident of Idaho working remotely from Boise, Idaho, on behalf of the Portland Community College as an online instructor. David performs all of his work duties in Idaho. David is not subject to income tax under Oregon law for the wages he receives from the Portland Community College; therefore, David does not have subject salary for PERS purposes under OPSRP.

If you have (or had) an employee whose salary is not includable as taxable income under Oregon law, please contact your ESC Account Team representative for assistance on how to report their data.

Employers should direct all questions concerning employee compensation and Oregon tax status to their finance office or to a qualified tax specialist of their choice.