



PERS Policy Paper – “Police & Fire” Classification

Background

PERS members who work in positions that meet the definitions for “Police Officer” and “Firefighter” (P&F) are eligible for special benefit provisions such as retiring at an earlier age and calculating their retirement benefit with a higher statutory factor. Frequently, legislation is introduced to expand the definition of “Police Officer” to afford P&F status to a broader range of positions. Recent proposed expansions have included dog control officers, physicians and nurses at Oregon State Hospital, juvenile detention workers, and community college police.

Policy Issue

What should determine whether a position is re-defined as a “Police Officer” in PERS statutes?

Discussion

1. Compliance with Federal Tax Law

The Internal Revenue Code (IRC) has several different definitions for P&F which affect different areas of federal taxation. For example, for purposes of an exception from the additional 10% tax on early retirement (IRC 72(t)), a “Qualified Public Safety Employee” is defined as any employee of a state or political subdivision of a state who provides police protection, firefighting services, or emergency medical services. Only those individuals who meet that specific definition would qualify for the exception when taking distributions from the PERS Individual Account Program (IAP) prior to age 59½. Another example would be under IRC 415(b), which separately defines P&F to mean “a full-time employee of any police department or fire department that is organized and operated by the state, Indian tribal government, or political subdivision...” who’s credited with at least 15 years of service as a full-time employee. This definition depends on whether the employer is a police department or fire department, rather than the job classification of the individual participant. Also, whether the employer is a police department or fire department is based on the function of an organization rather than on the name of the organization. Only those individuals who meet the definition under IRC 415(b) would qualify to retire prior to age 62 without having the IRC annual defined benefit limitation adjusted downward.

In other words, members who do not conform to the federal tax law definitions, regardless of the classification of their position as P&F in the Oregon PERS plan, may have federal tax problems. The whole PERS plan could incur federal compliance concerns if members do not qualify for these special federal tax provisions.

2. Cost for P&F Benefits

PERS P&F members are eligible to retire at an earlier age and their retirement benefit is calculated using a higher factor. These enhanced benefits (as well as some other provisions) mean that P&F status raises the cost of the benefits members earn while in that status by 4-5% of payroll. Those costs increase further if existing General Service (non-P&F) members move into the P&F classification.

For example, if a 55-year-old Tier One member is in a position that is reclassified as P&F, that member can take full retirement immediately instead of waiting until the General Service normal retirement age of 58. Normally, retiring three years “early” would reduce that member’s benefit by about 24%. Retiring as P&F with an unreduced benefit at age 55 increases the system’s costs for that member’s benefits earned from General Service because the pay-out will be longer than previously expected.

3. Alternate Benefit Structure

Proponents of bills to expand PERS’ “Police Officer” definition generally describe the jobs in question as having high physical demands or high stress levels. These characteristics are similar to traditional P&F classifications; members in such positions generally have shorter careers. Given the federal tax law concerns, however, expanding the “Police Officer” definition is not the most appropriate solution for members who are not in positions that principally engage in the custody, control, or supervision of individuals convicted of, or arrested for, a criminal offense or confined to a place of incarceration or detention.

A model for enhanced benefits exists in PERS for “high risk, high stress” jobs. ORS 238.280(2) has a special retirement eligibility rule for telecommunicators, otherwise known as 911 operators. Members with 25 years of service in those positions can retire earlier than General Service members. Their benefit is actuarially reduced and the member does not receive a cost of living adjustment until reaching age 55. These special provisions were added in recognition of the demanding nature of those positions, but modified to limit the cost increase of allowing these members to retire early. Similar limitations and adjustments could be made for other “high risk, high stress” jobs.

Policy Recommendation

Proposals to expand the PERS definition of “Police Officer” should use the same criteria as that classification has in federal tax law. Differences between the state and federal definition put PERS members at risk for federal tax consequences and may subject the overall plan to additional scrutiny of its tax qualified status.

Positions that fall outside the federal tax law definition could be afforded special provisions similar to telecommunicators, in light of their shortened expected careers, but similarly modified to reduce the cost impacts of a reclassification.