

# House Bill 3033

Sponsored by Representatives NERON, HUDSON, Senator JAMA; Representative LEVY B, Senators DEMBROW, GELSER BLOUIN (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes certain graduate and post-graduate student workers eligible employees for purposes of Oregon Public Service Retirement Plan.

## A BILL FOR AN ACT

1  
2 Relating to the status of student workers under the Oregon Public Service Retirement Plan; creating  
3 new provisions; and amending ORS 238A.005.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 238A.005, as amended by section 3, chapter 83, Oregon Laws 2022, is amended  
6 to read:

7 238A.005. For the purposes of this chapter:

8 (1) "Active member" means a member of the pension program or the individual account program  
9 of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

10 (2) "Actuarial equivalent" means a payment or series of payments having the same value as the  
11 payment or series of payments replaced, computed on the basis of interest rate and mortality as-  
12 sumptions adopted by the board.

13 (3) "Board" means the Public Employees Retirement Board.

14 (4) "Eligible employee" means a person who performs services for a participating public em-  
15 ployer, including persons considered employees of a participating public employer under 26 U.S.C.  
16 3121(d)(2), as in effect on January 1, 2022, and elected officials other than judges. "Eligible  
17 employee" does not include:

18 (a) Persons engaged as independent contractors;

19 *[(b) Aliens working under a training or educational visa;]*

20 *[(c)]* (b) Persons provided sheltered employment or make-work by a public employer;

21 *[(d)]* (c) Persons categorized by a participating public employer as student employees, **other**  
22 **than:**

23 **(A) Persons employed in positions classified as post-doctoral scholar positions by a public**  
24 **university listed in ORS 352.002, or by the Oregon Health and Science University, under ORS**  
25 **350.370; or**

26 **(B) Graduate students appointed by a public university listed in ORS 352.002 or the**  
27 **Oregon Health and Science University to perform teaching, research or administrative**  
28 **duties;**

29 *[(e)]* (d) Any person who is in custody in a state institution;

30 *[(f)]* (e) Employees of foreign trade offices of the Oregon Business Development Department who  
31 live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1        [(g)] (f) An employee actively participating in an alternative retirement program established  
 2 under ORS 353.250 or an optional retirement plan established under ORS 341.551;

3        [(h)] (g) Employees of a public university listed in ORS 352.002 who are actively participating  
 4 in an optional retirement plan offered under ORS 243.815;

5        [(i)] *Persons employed in positions classified as post-doctoral scholar positions by a public univer-*  
 6 *sity listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;]*

7        [(j)] (h) Any employee who belongs to a class of employees that was not eligible on August 28,  
 8 2003, for membership in the system under the provisions of ORS chapter 238 or other law;

9        [(k)] (i) Any person who belongs to a class of employees who are not eligible to become members  
 10 of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

11        [(L)] (j) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and  
 12 who continues to receive retirement benefits while employed; and

13        [(m)] (k) Judges.

14        (5) “Firefighter” means:

15        (a) A person employed by a local government, as defined in ORS 174.116, whose primary job  
 16 duties include the fighting of fires;

17        (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;

18        (c) An employee of the State Fire Marshal whose primary duties include fire investigation, fire  
 19 prevention, fire safety, fire control or fire suppression;

20        (d) An employee of the State Forestry Department who is certified by the State Forester as a  
 21 professional wildland firefighter and whose primary duties include the abatement of uncontrolled  
 22 fires as described in ORS 477.064; and

23        (e) An employee of the Oregon Military Department whose primary duties include fighting  
 24 structural, aircraft, wildland or other fires.

25        (6) “Fund” means the Public Employees Retirement Fund.

26        (7)(a) “Hour of service” means:

27        (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment  
 28 by a participating public employer for performance of duties in a qualifying position; and

29        (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave  
 30 during which an employee does not perform duties but for which the employee is directly or indi-  
 31 rectly paid or entitled to payment by a participating public employer for services in a qualifying  
 32 position, as long as the hour is within the number of hours regularly scheduled for the performance  
 33 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-  
 34 thorized leave.

35        (b) “Hour of service” does not include any hour for which payment is made or due under a plan  
 36 maintained solely for the purpose of complying with applicable unemployment compensation laws.

37        (8) “Inactive member” means a member of the pension program or the individual account pro-  
 38 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who  
 39 is not a retired member and who is not employed in a qualifying position.

40        (9) “Individual account program” means the defined contribution individual account program of  
 41 the Oregon Public Service Retirement Plan established under ORS 238A.025.

42        (10) “Institution of higher education” means a public university listed in ORS 352.002, the  
 43 Oregon Health and Science University or a community college, as defined in ORS 341.005.

44        (11) “Member” means an eligible employee who has established membership in the pension pro-  
 45 gram or the individual account program of the Oregon Public Service Retirement Plan and whose

1 membership has not been terminated under ORS 238A.110 or 238A.310.

2 (12) "Participating public employer" means a public employer as defined in ORS 238.005 that  
3 provides retirement benefits for employees of the public employer under the system.

4 (13) "Pension program" means the defined benefit pension program of the Oregon Public Service  
5 Retirement Plan established under ORS 238A.025.

6 (14) "Police officer" means a police officer as described in ORS 238.005.

7 (15) "Qualifying position" means one or more jobs with one or more participating public em-  
8 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,  
9 excluding any service in a job for which benefits are not provided under the Oregon Public Service  
10 Retirement Plan pursuant to ORS 238A.070 (2).

11 (16) "Retired member" means a pension program member who is receiving a pension as provided  
12 in ORS 238A.180 to 238A.195.

13 (17)(a) "Salary" means the remuneration paid to an active member in return for services to the  
14 participating public employer, including remuneration in the form of living quarters, board or other  
15 items of value, to the extent the remuneration is, or would be if the member were an Oregon resi-  
16 dent, includable in the employee's taxable income under Oregon law. "Salary" includes the addi-  
17 tional amounts specified in paragraph (b) of this subsection, but does not include the amounts  
18 specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in  
19 taxable income.

20 (b) "Salary" includes the following amounts:

21 (A) Payments of employee and employer money into a deferred compensation plan that are made  
22 at the election of the employee.

23 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the  
24 employee.

25 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit  
26 plan by the employer at the election of the employee and that is not includable in the taxable in-  
27 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2021.

28 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the  
29 election of the employee and that is not included in the taxable income of the employee by reason  
30 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2021.

31 (E) Retroactive payments described in ORS 238.008.

32 (F) The amount of an employee contribution to the individual account program that is paid by  
33 the employer and deducted from the compensation of the employee, as provided under ORS 238A.335  
34 (1) and (2)(a).

35 (G) The amount of an employee contribution to the individual account program that is not paid  
36 by the employer under ORS 238A.335.

37 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
38 652.190.

39 (c) "Salary" does not include the following amounts:

40 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the  
41 employer.

42 (B) Payments made on account of an employee's death.

43 (C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid  
44 leave.

45 (D) Any severance payment, accelerated payment of an employment contract for a future period

1 or advance against future wages.

2 (E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

3 (F) Payment for a leave of absence after the date the employer and employee have agreed that  
4 no future services in a qualifying position will be performed.

5 (G) Payments for instructional services rendered to public universities listed in ORS 352.002 or  
6 the Oregon Health and Science University when those services are in excess of full-time employment  
7 subject to this chapter. A person employed under a contract for less than 12 months is subject to  
8 this subparagraph only for the months covered by the contract.

9 (H) The amount of an employee contribution to the individual account program that is paid by  
10 the employer and is not deducted from the compensation of the employee, as provided under ORS  
11 238A.335 (1) and (2)(b).

12 (I) Compensation described and authorized under ORS 341.556 that is not paid by the community  
13 college employing the faculty member.

14 (J) Compensation described and authorized under ORS 352.232 that is not paid by the public  
15 university employing the officer or employee.

16 (K) Compensation described and authorized under ORS 353.270 that is not paid by Oregon  
17 Health and Science University.

18 (L) For years before 2020, any amount in excess of \$200,000 for a calendar year. If any period  
19 over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall  
20 be multiplied by a fraction, the numerator of which is the number of months in the determination  
21 period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit  
22 to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

23 (M) For years beginning on or after January 1, 2020, any amount in excess of \$195,000 for a  
24 calendar year. If any period over which salary is determined is less than 12 months, the \$195,000  
25 limitation for that period shall be multiplied by a fraction, the numerator of which is the number  
26 of months in the determination period and the denominator of which is 12. On January 1 of each  
27 year, the board shall adjust the dollar limit provided by this subparagraph to reflect any percentage  
28 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-  
29 lished by the Bureau of Labor Statistics of the United States Department of Labor.

30 (18) "System" means the Public Employees Retirement System.

31 (19) "Workers' compensation benefits" means:

32 (a) Payments made under ORS chapter 656; or

33 (b) Payments provided in lieu of workers' compensation benefits under ORS 656.027 (6).

34 **SECTION 2. The amendments to ORS 238A.005 by section 1 of this 2023 Act apply only**  
35 **to service performed for a participating public employer on or after the effective date of this**  
36 **2023 Act.**

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