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To: Joint Committee on Pensions, Investments, and Benefits

From: Julian Efird, Principal Research Analyst

Re: Working after KPERS Retirement

This memorandum addresses certain retired members of the Kansas Public Employees Retirement System (KPERS) and the policies adopted by the Legislature for working after KPERS retirement. The Legislature has alternated between a policy of restrictions and a policy of no restrictions for certain retirees who go back to work for a KPERS participating employer, including state agencies, local units of government, school districts, other governmental entities, and other educational institutions.

When KPERS was established in the early 1960s, there were restrictions on returning to work after retirement if the position were with a KPERS participating employer. Gradually, most of the post-retirement restrictions were eliminated by the mid-1980s.

New restrictions on working after KPERS retirement began with legislation in the 1988 Session. New law was enacted that instituted the policy that: If a retired KPERS member who retired on or after July 1, 1988, is employed, elected or appointed in or to any position or office for which compensation for service is paid by a KPERS participating employer for a period of more than 30 days in any calendar year, such participating employer shall pay to the system (KPERS) an amount equal to the retirement benefits paid to the retired KPERS member. The law exempted the KPERS retirees working after retirement as substitute teachers and as officers, employees, appointees, and members of the Legislature.

In years since 1988, the Legislature allowed other exceptions to the statutory restrictions, which suggests a partial movement away from the restriction adopted in 1988. In fact, the restrictive 1988 language lasted only one year and was replaced in 1989 by the Legislature with the another policy for KPERS retirees. The 1989 legislation removed all provisions relating to post-retirement work restrictions for those who retired after July 1, 1989, unless the retired member is employed by the same employer for which they worked during the last two years of KPERS participation. In such cases the retired member could receive KPERS benefits until earnings reached $6,000 in a calendar year. At that point the retired member could elect to terminate employment and continue to receive benefits; continue employment and have KPERS benefits suspended for the remainder of that calendar year; or revoke being retired and become a participating KPERS member.

Substitute teachers and officers, employees, appointees, and members of the Legislature continued to be exempt from the post-retirement salary restrictions.

In 1994 legislation, the option of un-retiring and becoming an active participating KPERS member was removed from the statute.

The 2005 Legislature added a three-year exemption from the working after KPERS retirement salary cap for licensed nurses who returned to work after retiring from a state institution. The participating state institutions which hired such retired nurses were required to pay the actuarially-calculated employer contribution to KPERS for retired nurses who were re-hired after KPERS retirement.

There were incremental increases in the statutory salary cap for those persons working after KPERS retirement. The last increase was in 2006 when the Legislature increased the working after KPERS retirement cap from $15,000 to $20,000 for retirees who returned to work for the same participating employer from which they retired. The increased cap of $20,000 also applied to elected public officials who retired from KPERS-covered positions and continued to serve in an elected public office that also is covered by KPERS.

Another statutory policy required KPERS retirees to be off the payroll before returning to work after retirement for any participating KPERS employer. A 30-day separation requirement originally was added by the 1998 Legislature in response to a federal compliance review that recommended a specific separation time-period in order to determine that a person actually was retired. Prior to July 1, 1998, there had been no prohibition against retiring one day and going back to work the next day for a KPERS participating employer The current 60-day separation time-period was added in 2009.

In addition to raising the salary cap for working after KPERS retirement, the 2006 Legislature specifically addressed public school teachers and working after KPERS retirement by changing existing law. The legislation amended the statutory definition of a professional employee to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of professional service between a board of education and an exclusive representative of professional employees provided to the contrary. The legislation also changed the definition of "teacher" to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member.

Also in 2006, the Legislature imposed a special assessment on all KPERS participating employers who hired a retired KPERS member. A statutory provision required that participating employers who employed a retired KPERS member would be responsible for paying an actuarially-determined employer contribution plus the 4.0 percent employee contribution. The provision applied to state, school, and local KPERS participating employers who hired a retired KPERS member beginning July 1, 2006. Any KPERS retiree previously employed before July 1, 2006, by a participating employer was exempted from the new law.

In 2008, the Legislature removed a sunset provision that would have repealed an exemption for licensed nurses at state institutions who had been exempted from the working after KPERS retirement salary cap. The exemption was scheduled to expire after three years on June 30, 2008.

The 2008 Legislature also amended the statutory provisions related to working after KPERS retirement that applied to teachers. A change in the definition of "teacher" provided that a teacher means (1) a teacher defined by KSA 72-5436 and (2) any professional employee who retired from school retirement and previously was covered by KPERS.

In 2009, the Legislature extended the break in employment required after KPERS retirement from 30 days to 60 days before retirees can return to work for any KPERS participating employer. The Legislature clarified that any retirees who return to work for a KPERS participating employer, even if associated with a third-party contractor who provided services to a school district or other employer, would be covered by the working after KPERS retirement salary cap if working for the same participating employer from whom they retired.

The 2009 Legislature also established a three-year exemption from the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation provided for the participating employers to pay KPERS the actuarially-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement. The provisions were scheduled to sunset on July 1, 2012. A report from KPERS to the Joint Committee on Pensions, Investments and Benefits is required to be submitted after the sunset date.

The 2012 Legislature extended the sunset date to July 1, 2015, for the exemption to the working after KPERS retirement salary cap for school professionals who returned to work for their former KPERS participating school employer. The 2012 legislation continued the provision for the participating employers to pay KPERS the actuarially-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement.

The 2013 Legislature took no action regarding the issue of working after retirement or the sunset date of July 1, 2015, for the exemption of the school professionals. The House Committee on Pensions and Benefits studied the issue, established a subcommittee to further review the issue, and heard reports presented by KPERS staff that summarized the issue in documents that might be used during an interim study.

At the present time, there is a permanent exemption from the working after KPERS retirement salary cap that was authorized for licensed nurses who returned to work for state institutions from which they retired. Because there were fewer than five cases, the original three-year exemption was replaced with the permanent policy change for those licensed nurses. In addition, substitute teachers and legislative staff continue to be exempt from the salary cap on working after KPERS retirement.