



The procedural requirements for rehiring retirees

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This factsheet is designed to address the most frequently asked questions about rehiring retirees. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

Rehiring retirees is an option that many school districts consider. In some districts, these decisions are controversial, in others they are not. Whether it is wise to rehire a retiree is a decision best left to each individual board of education based on the facts and circumstances involved. In 2003, the law was changed to require boards of education that choose to rehire employees who have retired from the school district to take several steps prior to reemployment (Ohio Revised Code sections (RC) 3307.353 and 3309.345 and Ohio Administrative Code (OAC) sections 3307:1-13-03 and 3309-1-61). This fact sheet is designed to inform boards of education how to rehire a retiree.

What does the law say?

In order for a board to reemploy a retiree from the same school district, the board must give public notice 60 days before the reemployment begins that the person is or will be retired and is seeking reemployment with the district. This notice must include the time, date and location of the public meeting that will be held on the issue.

After the notice is issued, the board must hold a public meeting on the issue of employing the person between 15 and 30 days before the reemployment begins.

Who is affected?

The law affects all employees whose positions are "customarily filled by a vote of members of a board or commission." This includes boards of education. The law applies to employees who retire and seek to be rehired by the same school district, either as State Teachers Retirement System (STRS) (RC 3307.353) or State Employees Retirement System (SERS) (RC 3309.345) retirees. STRS retirees also are referred to as "superannuates." (RC 3307.01(M))

The language, which is practically identical in RC 3307.353 and RC 3309.345, states, "A board or commission that proposes to continue the employment as a reemployed retirant [superannuate] or rehire as a reemployed retirant [superannuate] to the same position."

This phrasing leaves something to be desired in terms of understanding the applicability to different types of situations. However, it appears that the law applies only to persons who retire from, and seek to be rehired to the same position. Thus, an individual who retires as a principal who seeks reemployment in the same district as a teacher probably would not be subject to the notice and meeting requirements.

How do boards of education comply with the new rule?

Districts must comply with the notice and hearing provisions. It appears that the requirement of the 60-day notice prior to a board's action to reemploy could be accomplished by using the same method the board uses to notify the public of its meetings; in other words, by publication in a newspaper of general circulation or by a "reasonable method whereby any person may determine the time, place, and purpose of all special meetings." Nothing in the statutes suggests that the board may not hold the public hearing at a regularly scheduled, as opposed to a

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For more information on this subject, please contact OSBA's Division of Legal Services

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special, meeting of the board. However, the notice must clearly indicate "that the person is or will be retired and is seeking employment with the employer." Therefore, it appears that the notice of the time and place of the public meeting must include the purpose as indicated.

The easiest way to count this out is to determine the date the board will rehire the individual (the date of the board action to re-employ, not the date the person starts back to work). Then, count back 60 days from that date and that is the deadline to publish the public notice. Count back 30 and 15 days from the date the board will act to rehire. That two-week period is the time period in which the board must have the public meeting on the issue of the person being reemployed. It may be possible to have this meeting at the board's regularly scheduled meeting. If not, the board will need to call a special meeting. Once the date of the public meeting is selected, it must be included in the public notice sent out 60 days prior to the meeting in which the board will act to rehire.

Example: The board wants to rehire Dr. Good starting in August. The administrator's first day will be August 1. The board will act to rehire at its regular meeting on July 15. Counting back 60 days leads to May 16. Counting back thirty days is June 15 and 15 days is June 30. The board must publish the public notice on or before May 16. The public notice will include the date of the public hearing, which will need to be between June 15 and June 30. The board's regularly scheduled June meeting is June 20, so the board will hold the hearing at that meeting.

The most confusing thing about the retire-rehire law is determining which date to use to start counting. The above-description uses the date the board acts to employ an individual. Some persons might interpret the law as using the date the reemployed retiree is to begin work, rather than the date of board action. It seems more consistent with the purpose of the statute to use the former date. For example, suppose that a board wishes to reemploy a retired principal in the same position and acts on that reemployment in June for work beginning the next school year, in August. It would seem that the statute contemplates that the time for notice and hearing before the public on the issue of reemployment would occur prior to the board acting to reemploy the retired principal. Public comment and notice after the board action to employ, regardless of the date work is to begin, would be irrelevant if the board has already acted to employ the retiree. For this reason, OSBA believes boards should use the date of board action to rehire, not the date the employee will begin work.

What must the hearing include?

The law requires the board to "hold a public

meeting on the issue of the person being employed by the employer." (RC 3307.353 and 3309.345, respectively) In terms of the content required at the hearing, nothing in the new statutes or in existing law requires public participation at this or any other meeting of the board. However, the intent of the new provision appears to contemplate the possibility of providing public participation. The language states, "hold a public meeting on the issue of the person being employed by the employer." (RC 3307.353(B)(2), RC 3309.345(B)(2)). If the board of education typically provides public participation at its regular meetings, it should consider following that already-established practice.

Do boards of education have to comply each time they renew a contract?

No. STRS and SERS rules clarify that a re-employed retiree for whom the district has complied with the re-employment requirements and certified the same to the retirement system does not have to do so every year, where the employment continues in the same position from year to year. Therefore, a board may continue to renew limited contracts for rehired retired employees from year to year without notice and hearing once the board has certified it complied initially upon re-employment.

How is the rule enforced?

There are no enforcement provisions in the law. RC 3307.35 and STRS and SERS rules require boards to notify them of the reemployment and to certify that the district has complied with the rules.

What is the practical impact of the new rule?

It is likely the most controversial rehires will involve superintendents and other high-ranking administrators. Rehiring retired teachers and nonteaching employees generally will raise less public scrutiny.

Can we require a retiree to obtain health care from STRS?

Prior to 2009, retirees were eligible to obtain health benefits from STRS while being employed by a school district. Districts would often require retired rehires to do this in order to save funds. In 2008, STRS adopted rules that became effective Jan. 1, 2009 that effectively ended this practice. The rule, OAC 3307:1-11-02, declares retirees ineligible for primary health coverage by STRS if the retiree is "employed and has access to a medical plan with prescription coverage available through the employer or if employees of that employer in comparable positions have access to a medical plan available through the employer provided the medical plan with prescription coverage available through the employer is equivalent to the medical

plan with prescription coverage at the cost available to full-time employees as defined by the employer.”

What are the collective bargaining implications?

There may be an interesting interplay between the provisions of the new laws and the provisions of current collective bargaining agreements with respect not only to the hiring of employees in general, but also to those contracts that have provisions specifically addressing the procedures for rehiring retired employees. Collective bargaining contract provisions, if written correctly, can supersede applicable provisions of the law. If the district currently has a negotiated provision that addresses how retired employees will be rehired into the district, theoretically, the board should follow that

procedure, whatever it is. However, if the procedure as written in the contract does not specifically state that it supersedes or replaces applicable law on point, then districts should err on the side of caution and follow the procedures outlined in the new laws.

Conclusion

Please contact your board counsel for specific questions or the OSBA Legal Division for additional information.

The information in this factsheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.

