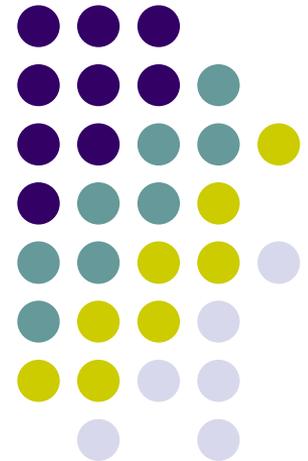




Presented by
The Office of Pensions





Every month 100s of State of Delaware employees retire ... and every month numerous retirees Return to Work.



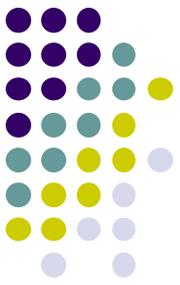
Today's presentation will provide information for you to relay to your HR staff to better educate them and to assist them with better educating individuals who are retiring.



Topics to be addressed

- When did the Return to Work limitations begin?
- Why is compliance with the Return to Work limitations important?
- Who do these limitations apply to?
- What are the limitations?
- Employees versus contractors?
- Where can I get more information?

When did the Return to Work limitations begin?



The Return to Work limitations are the result of changes in both the Delaware Code and Delaware Public Employees' Retirement System (DPERS) rules and regulations to ensure compliance with the stricter regulations of the Internal Revenue Service (IRS) put in place in 2012.



Why is compliance with the Return to Work limitations important?



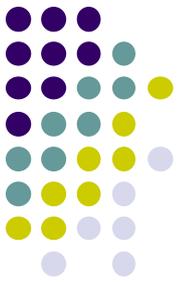
Adhering to the Return to Work limitations ensure compliance with the regulations of the Internal Revenue Service (IRS) which allows the DPERS to maintain its defined benefit plan status.



Who do these limitations apply to?

- Any individual retiring from a State agency or school district which is under the State Employees' Pension Plan
- Any current State Employees' Pension Plan retiree who is planning to return to work

Who do these limitations NOT apply to?



- Individuals retiring from State employment and returning to private industry
- Individuals retiring from State employment and returning to other governmental employment
- Individuals retiring from pension plans other than the State Employees' Pension Plan



What are the limitations?

Generally speaking, no one can retire, collect a pension, and work in a pension creditable position in that same pension plan regardless of the plan they retire from.

What are the limitations specific to the State Employees' Pension Plan?



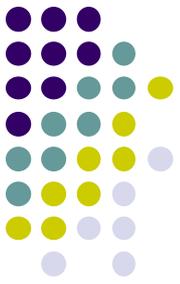
- Separation limitations based on age at retirement
- Limitations regarding the types of employment a retiree can return to
- Earnings limitations

Separation limitations based on age at retirement:



- Individuals under the age of 65 must have a six month separation
 - One caveat to this limitation is individuals returning as contractors working through a third party.
- Individuals over the age of 65 are not required to have ANY separation.
 - These individuals can retire on Friday and return to work in a non-pension creditable position on Monday.

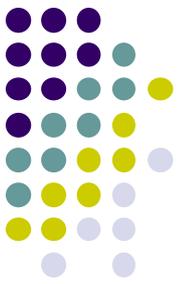
Why is 65 the magic number?



65 is the age the Internal Revenue Service (IRS) considers “normal retirement age”.



Limitations regarding the types of employment a retiree can return to



- **Casual/Seasonal employees** must work fewer than 30 hours per week.
- **Temporary employees** who are working more than 30 hours per week must work for a period of less than 12 months.
- **Substitute employees** must be working on a per diem basis.



Earnings limitations

- Started out as \$19,240 in 2012
- Increased to \$30,000 in 2013 to be effective for 2014
- Based on calendar year earnings
- Exceeding the earnings limit results in a reduction of \$1 for every \$2 an individual is over the limit.
 - This reduction begins the fiscal year following the calendar year of the earnings.

How are individuals who are retiring notified of these limitations?



- Limitations are detailed in their pension application on a page requiring their signature.
- Limitations are also reviewed in the approval letter they receive from the Pension Office.

How can individuals who are already retired get information about these limitations?



- DPERS Newsletter
- DPERS Website
 - Newsletters are available online
 - Returning to Work tab

Do the restrictions end at a certain age?



NO

Many individuals assume that these restrictions end at a certain age because that is the case with Social Security.

That is not the case with their pension.

These limitations and restrictions are in place for the duration of their pension.



Employees vs. Contractors

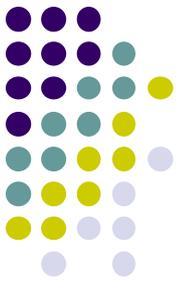
The Internal Revenue Service provides a 20 Factor Test to help agencies determine whether an individual is an employee or a contractor.

The main determining factor is:

Who controls the employee?

They look at things like Behavioral Control, Financial Control, and the Relationship between the Worker and the Agency.

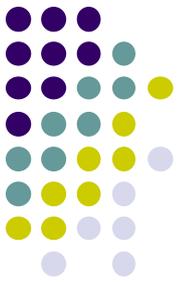
Doesn't simply having a contract make an individual a contractor?



NO

The general rule is that an individual is a contractor if the payer has the right to control only the result of the work and not what will be done or how.

IRS 20 Factor Test



This is an IRS tool used to assist in determining whether the person providing service is an employee or a contractor.

There is no “magic” or set number of factors that makes the worker an employee or an independent contractor. All factors must be assessed to determine the degree or extent of the right the payer has to control or direct the individual.

No one factor stands alone. Also, factors that are relevant in one situation may not be relevant in another.



Behavioral Control:

Does the company control or have the right to control what the worker does and how the worker does their job?

Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. The behavioral control factors fall into the categories of:

- What type of instructions are given?
- What degree of instruction is given?
- Is training required?
- Are there evaluation systems in place?



Financial Control:

Are the business aspects of the worker's job controlled by the payer?

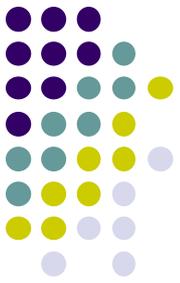
Financial control refers to facts that show whether the business has the right to control the economic aspects of the worker's job. The financial control factors fall into the categories of:

- Who provides tools? Supplies?
- Is the individual reimbursed for expenses?
- Could the individual have profit or loss from this employment?
- Are his/her services available to the general public?
- How is this individual paid?

Do you withhold Social Security, Medicare?

Do you pay unemployment tax?

Type of Relationship



Type of relationship refers to facts that show how the worker and business perceive their relationship to each other. The factors, for the type of relationship between two parties, can generally be answered by questions such as:

- Are there written contracts?
- Is the individual offered employee type benefits?
- Are this individual's services a key activity of the business?
- What is the permanency of the relationship?

Did the individual work for you previously?

Is the employment expected to be ongoing?

Retirees contracting directly with a State organization

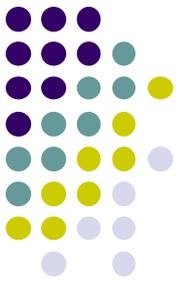


These individuals must complete the [Direct Employment](#) form which incorporates the [IRS 20 Factor Test](#) to determine whether an individual qualifies as an employee or an independent contractor.

For individuals submitting the Direct Employment form, DPERS will issue a determination, based on IRS definitions, as to whether the individual is an employee or a contractor.

Individuals who meet the definition of employee must then decide whether to continue working or to continue receiving their pension benefits as he/she will be unable to do both.

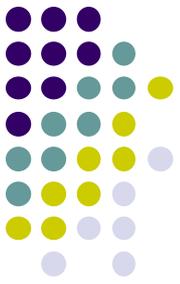
Retirees working through a third party employer which contracts its services to a State organization



These individuals must complete the [Indirect Employment](#) form which will place the responsibility of determining the retiree's status as a contractor on the three parties involved – the retiree, the contracting State organization, and the third party employer.

For individuals submitting the Indirect Employment form, DPERS will not issue a determination as by submitting the form, the parties involved are accepting responsibility for any claims, penalties, or fines that arise from the employment either through Delaware False Claims and Reporting Act and/or the IRS.

Public Integrity Commission



Be aware that having a determination from the Public Integrity Commission does not exempt a retiree from adhering to the DPERS Return to Work criteria. Whether or not a retiree can ethically return to work and whether or not a retiree can return to work without compromising his/her pension eligibility are separate and distinct issues.

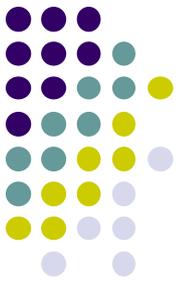
Suggestions to consider



- When hiring a new employee, confirm whether or not they are a retiree.
- If so, suggest they contact the Pension Office.



If you hire a retiree into a pension creditable position ...



Please keep in mind that retirees are not entitled to a pension benefit in any month they are actively employed.

What does this mean?

If an individual's date of hire is the 25th of the month, they are not entitled to pension benefits for that month.

Another reason retirees will want their hire date to be as close to the first of the month as possible is because retiree healthcare benefits are not prorated.

What does this mean?

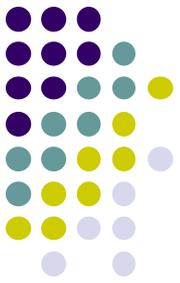
Their benefits end on the last working day of the month previous to their rehire. They will be without benefits from the first day of the month until their date of hire.

If you hire a retiree into a casual/ seasonal or temporary position ...



- Make them aware of the \$30,000 earnings limit per calendar year.
- When hiring individuals mid year, they may be well under the limit for that calendar year because they are only working several months.
- Salaries for ongoing casual/seasonals should be reviewed in January so decisions can be made about whether or not their hours need to be adjusted so their pension is not disrupted.

Where can I get more information?



Our website:

open.omb.delaware.gov



Click on the “Returning to Work” tab



Q & A

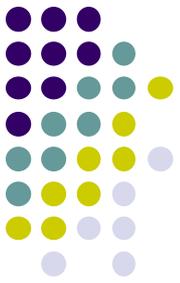
You have

Questions

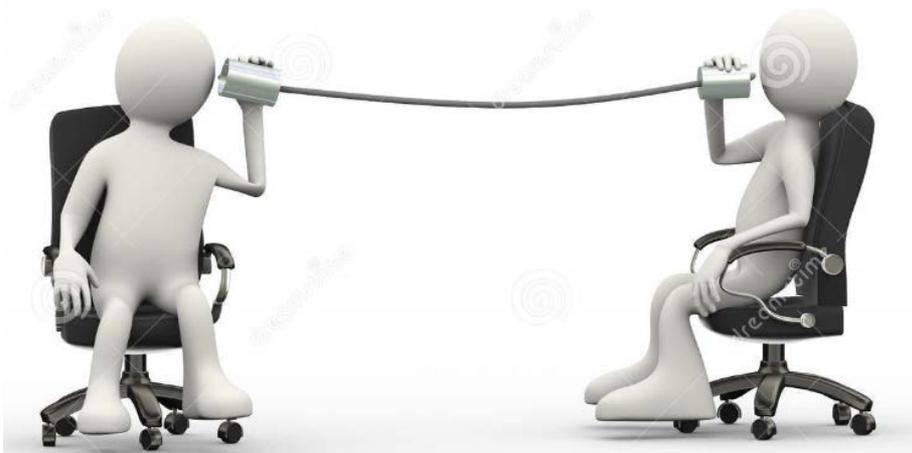
We have

Answers

In closing ...



When in doubt, contact the
Pension Office.



We are happy to assist with any
Return to Work issues or concerns.