

# Employment After Retirement



Teacher Retirement System of Texas

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# TABLE OF CONTENTS

INTRODUCTION.....	1
NOT YET RETIRED.....	3
Early-Age Retirees.....	3
Normal-Age Retirees .....	16
ALREADY RETIRED.....	30
Early-Age and Normal-Age Retirees .....	31
DISABILITY RETIRED .....	44



## TRS MISSION STATEMENT

### TRS Vision

Earning your trust every day.

### TRS Mission

Improving the retirement security of Texas educators by prudently investing and managing trust assets and delivering benefits that make a positive difference in members' lives.

# INTRODUCTION

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## EMPLOYMENT AFTER RETIREMENT

The information in this brochure does not apply to your employment with an employer not covered by TRS. Service retirees may work without limit for an employer not covered by TRS without losing any monthly annuity payments. Disability retirees may work an unlimited amount of time for an employer not covered by TRS but may be subject to a compensation limit.

If you are retired from TRS and thinking about returning to work with an employer covered by TRS, OR if you are thinking about retirement and considering possible employment with an employer covered by TRS after you retire, the information in this booklet will help you make the decision that is right for you and avoid any unexpected loss of annuity payments.

This booklet is divided into three color-coded sections that address the considerations for each of the following situations:

- **NOT YET RETIRED (Green)**
- **ALREADY RETIRED (Blue)**
- **DISABILITY RETIRED (Orange)**

Each section includes information that you need to make an informed decision. Because early-age retirees cannot negotiate for future employment until after the required break in service, special considerations for these types of retirees are addressed in each section. Also, employers covered by TRS must pay both a pension and health benefit surcharge for hiring certain retirees and some employers may want the retiree to help contribute towards the cost of employing the retiree. Information about employment that may trigger the surcharge is included.

**NOTE:** *This brochure has been written in non technical terms wherever possible. However, if questions of interpretation arise as a result of the attempt to make the information easier to understand, TRS laws and rules remain the final authority and will determine the disposition of any conflict or question.*

If you still have questions after reading the information in this brochure or you do not find your employment situation addressed, please contact TRS for further information. Do not rely on information provided to you by another retiree, co-worker, or even your employer. Your retirement status may not be the same as another retiree or you may have retired at a different time than your fellow retiree. Different laws may apply to different retirees. Your employer is an expert in the business of education; TRS is the expert on your retirement. Call TRS when you have questions about your employment after retirement.

Find the section that matches your current employment or retirement status and find out how the employment after retirement program works for you.



If you are not yet retired, but thinking about retiring and wondering if working for an employer covered by TRS after you retire is possible, there are many things to consider. Do you want to work full time or maybe only part time? Do you have to resign your employment before you can retire? When can you negotiate an agreement to return to work? Will employment affect your annuity? These questions and others are answered in this section. If your question is not covered by this section, contact TRS for information regarding your situation.

## NOT YET RETIRED: Early-Age Retirees

If you will be an early-age retiree, meaning your annuity is reduced because you do not meet the criteria for normal-age retirement, the information in this section is for you. Because you are retiring before normal-age retirement, you must wait before negotiating for any type of employment with a TRS-covered employer that begins after you retire.

**NOTE:** *If you do not observe the restrictions on negotiating for future employment, you could revoke your retirement. If you revoke your retirement, you will have to repay all of the annuity payments including any Partial Lump Sum Option (PLSO) payments you receive from TRS and also repay any health benefit payments paid on your behalf by TRS-Care.*

Once you can negotiate for future employment the full range of opportunities for employment after retirement is available to you. Here is information for you to consider:

**QUESTION:** When can you negotiate with the TRS-covered employer about returning to work after retirement?



**SHORT ANSWER:** You can negotiate with the TRS-covered employer AFTER one full, complete calendar month after you retire.

**But, you may also want to know:**

All retirees, both normal-age and early-age, must wait one full, complete calendar month after retirement before returning to work. **However, early-age retirees must also wait the one full, complete calendar month before NEGOTIATING with a TRS-covered employer to return to work -- ANY TYPE OF WORK.** This requirement is based on both state and federal law. At the time you retire, you cannot have a contract or agreement to return to work. Your retirement date and your last day of employment are not always the same day. Your retirement date for TRS purposes is always the last day of the month.

**QUESTION:** What happens if you have a contract or agreement to return to work before you retire or you negotiate a contract or agreement to return to work before the end of the full, complete calendar month after you retired?

**SHORT ANSWER:** You revoke your retirement and must return all annuity payments including any PLSO payments and any health benefit payments paid on your behalf by TRS-Care because you have not terminated all employment with a TRS-covered employer and you were not eligible to retire.

**But, you may also want to know:**

If you revoke your retirement by having a contract or agreement to return to work in place before the end of the one full, complete calendar month after your retirement date, you must return all annuity payments including any PLSO payments you receive from TRS and any



health benefit payments paid on your behalf by TRS-Care. You must then submit a new application to TRS to retire and start the retirement process again. TRS cannot pay you any benefits under the new retirement until you pay back all of the benefits you already received. **While you may want to make sure you can return to employment before you submit your resignation and retire, do not risk it.** Wait until one full, complete calendar month after you retire to talk to the TRS-covered employer about returning to work.

**QUESTION:** Can working in any other way cause you to revoke your retirement?

**SHORT ANSWER:** Yes, if you return to work at any time during the one full, complete calendar month following the month of your retirement.

**But, you may also want to know:**

All retirees must wait one full, complete calendar month after retirement before returning to work. Your retirement date is always the last day of the month in which you retire. If you work into June, but no later than June 15 and retire May 31 as allowed by law, you have to wait until August 1st to return to work. Remember, you must wait one full, complete calendar month. Because you worked in June, you cannot count the remainder of June toward this requirement. July would be the first full, complete calendar month after you stop working and retire.

If you revoke your retirement by returning to work too soon, you will have to repay any annuity payments including any PLSO payments made by TRS and any health benefit payments paid on your behalf by TRS-Care. You will have to submit a new application to TRS to retire and start the process over again.

**QUESTION:** How much time can you work without losing any annuity payments?



**SHORT ANSWER:** You can work as follows without losing any annuity payments:

- as a **SUBSTITUTE**, without any limit on the number of days;
- as much as **ONE-HALF TIME**, each month;
- in a **COMBINATION OF SUBSTITUTE AND ONE-HALF TIME** work, provided the total number of days worked in each calendar month does not exceed one-half the number of workdays in that calendar month;
- as a **FULL-TIME EMPLOYEE** (greater than one-half time) after a break in service of 12 full, consecutive calendar months after the date of retirement.

**But, you may also want to know:**

The school year for all retirees is September 1 to August 31 – every year, for every retiree, and for every employer. It does not matter when the school instructional year begins for your employer.

**A SUBSTITUTE** for TRS purposes is a person who serves on a temporary basis in the place of a **current** employee. The position filled by the retiree cannot be vacant and be considered a substitute position. The reason the position is vacant or the length of time the position is expected to be vacant does not change the outcome: **a retiree cannot be considered as a substitute when serving in a vacant position**. As a retiree, you may serve in a vacant position, but you will be considered by TRS under another employment type such as full time or half time rather than as a substitute. Also, working any part of a day as a substitute counts as working a full day. If you combine substitute work and one-half time work in the same calendar month, you cannot substitute an unlimited number of days in that month. This is important to know if you combine substitute work with one-half time employment as described below.

**ONE-HALF TIME EMPLOYMENT** is working no more than the equivalent of **four** clock hours for each work day in that calendar

month (each Monday - Friday in the calendar month, including holidays and days the employer is closed for business). **This standard applies to all positions.** If your employment is measured in class hours or semester hours rather than clock hours (typically applies to higher education employment), each course or semester hour will count as two clock hours in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If your employer has established a greater amount of preparation time for each course or semester hour, your employer's established standard will be used to determine the number of course or semester hours you may teach without loss of annuity. As long as you do not exceed the equivalent of **four** clock hours for each workday in that calendar month, you will not forfeit your annuity for that month. The total number of hours allowed for that month may be worked in any arrangement or schedule. For example, if there are 21 work days that month, you may work as much as 84 hours that month (21 days X 4 hours per day = 84 hours). You may work the 84 hours using any work schedule, including working 40 hours one week and 44 hours another week; working 4 hours per day for each of the 21 days; or any other schedule that results in you working no more than 84 hours that month. Because there are different numbers of work days each calendar month, you will have to know how many work days are in that month to know how many hours you may work under the one-half time exception.

You can **COMBINE EMPLOYMENT AS A SUBSTITUTE AND ONE-HALF TIME EMPLOYMENT** during the same school year or even the same calendar month. For instance, you may work one month as a substitute and the next month work one-half time. You may also combine substitute work and one-half time work in the same calendar month, but you cannot work more than one-half the number of workdays in that month without losing an annuity payment. This means if you combine substitute work and one-half time work in the same calendar month, you cannot substitute an unlimited number of days in that



month. Also, working any part of a day as a substitute counts as working a full day when calculating the total number of days you can work. This is important to know if you combine substitute work with one-half time work in the same calendar month. To maximize the number of hours you can work in a month in which you combine one-half time and substitute work, try to work as many hours as possible on the days you work. Remember - when combining one-half time and substitute work in the same calendar month, the number of hours you work does not matter; you are limited only by the number of days you can work when you combine the two.

**FULL-TIME EMPLOYMENT** is employment that is more than one-half time. Full-time employment cannot begin until you have a 12 full, consecutive calendar month break in service after your date of retirement. Working full-time without taking a 12 full, consecutive calendar month break in service will result in the loss of your monthly annuity payment for each month you work full time. This means you cannot work in ANY capacity for a TRS-covered employer for 12 full, consecutive calendar months. Working as a substitute or one-half time in any month counts as work when determining if you have had the required 12 full, consecutive calendar month break in service. The 12 full, consecutive calendar month break in service does not have to be the first 12 consecutive months after retirement, but the break in service must be 12 full, consecutive calendar months at some point prior to returning to full-time employment. You will forfeit your annuity for each month you work full-time if you have not had the required break in service. Remember, full-time means more than one-half time and one-half time is limited to no more than the equivalent of **four** hours for each work day that month.

**QUESTION:** Can you work full time without losing your annuity?

**SHORT ANSWER:** Yes, but only after a 12 full, consecutive calendar month break in service.



### **But, you may also want to know:**

Prior to June 17, 2011, retirees could work up to **six** months of full-time employment without forfeiting an annuity. That opportunity is no longer available. Retirees who retired before January, 2011 may work an unlimited amount of time without forfeiting an annuity but all retirees who retired January, 2011 or after must have a 12 full, consecutive, calendar month break from all employment with a TRS-covered employer before working full time. Without the required break in service, you will lose your annuity each month you work for a TRS-covered employer for more than one-half time.

**QUESTION:** Can you combine full-time employment with one-half time employment or substitute service without losing an annuity?

**SHORT ANSWER:** Yes, you can combine full-time employment with any other type of employment without losing an annuity if you have a 12 full, consecutive month break in service after the date of retirement.

### **But, you may also want to know:**

You can only work full time without forfeiting an annuity if you have a 12 full, consecutive calendar month break in service. Once you observe this required break in service, you can work for a TRS-covered employer in any capacity and for any amount of time without losing an annuity. In planning your retirement, you may want to consider whether returning to work with a TRS-covered employer at the end of a 12 full, consecutive calendar month break in service is a viable option or perhaps working for another employer that is not covered by TRS for 12 consecutive months after you retire would help you to optimize the opportunity for later full-time employment with a TRS-covered employer.

**QUESTION:** How are paid leave days, whether sick leave



days, personal leave days, compensatory leave days, or vacation leave days counted in determining how much time you have worked?

**SHORT ANSWER:** Paid leave time is counted the same as if you worked. It doesn't matter what type of paid leave is taken.

**But, you may also want to know:**

In determining whether you worked in a given calendar month, TRS considers paid time off the same as time worked. Your employer is required to report to TRS the paid time off as if you worked.

**QUESTION:** What happens if you work more time than you are allowed?

**SHORT ANSWER:** If you are working under the one-half time exception or combining substitute work and work under the one-half time exception in the same calendar month, you will lose your annuity for each month that you exceed the amount of time you are allowed to work. If you do not observe a 12 full, consecutive calendar month break in all service with any TRS-covered employer, you will forfeit your annuity for any month in which you work more than the equivalent of **four** hours for each work day in the month, unless you are only working as a substitute. Working more than the equivalent of **four** hours for each work day in the month is full-time employment for the purposes of employment after retirement. If you combine one-half-time employment and work as a substitute in the same calendar month, you may



work one half the number of work days in that month without forfeiting your annuity.

**But, you may also want to know:**

Each TRS-covered employer is required to submit a report to TRS each month indicating the names of the retirees employed and the amount of time they worked. TRS reviews the report and takes steps to stop your annuity payment if you exceed the amount of time available to work. If your annuity payment has been sent to you, you must return the payment.

**QUESTION:** Will your employer pay surcharges because of your employment?

**SHORT ANSWER:** If you are working one-half time or more and your employment is not temporary, your employer must pay the surcharge to TRS.

**But, you may also want to know:**

Your employer is required to pay surcharges to TRS on retirees working in positions covered by TRS and who retired after September 1, 2005. Regular employment covered by TRS is employment that is

- one-half or more of the full-time equivalent for that position or a minimum of 15 hours of work per week if there is no full-time equivalent position and
- expected to last 4½ months or more.

Employment not covered by TRS and not subject to the surcharges includes:

- Substitute service (the position cannot be vacant);
- Temporary employment (employment that is expected to last less than 4½ months); and
- Less than one-half time employment (employment that is less than half of the full-time equivalent position or less than 15 hours per



week if there is no full-time equivalent. Even as little as one hour less than one-half time prevents the surcharge payment.)

**IMPORTANT DISTINCTION.** It is important to note that there are two standards for one-half time employment: one standard is used by your employer to determine if surcharges are owed to TRS because of your employment in a TRS eligible position and the other half-time standard is used to determine how much time you may work each month without forfeiting your monthly annuity. The two standards are not interchangeable.

Employer Surcharges:

Standard – The retiree is working in a TRS-eligible position.

No loss of your monthly annuity:

Standard - You may work the equivalent of **four** hours for each work day in that calendar month (each Monday-Friday, including holidays and days your employer is closed for business).

**In order for your employer to avoid paying the surcharges,** if your employment is expected to continue for 4½ months or more, you must work less than one-half of the full-time load. If there is no full-time equivalent for your position, you must work less than 15 hours per week in order for your employer to avoid the surcharges.

The amount of the pension surcharge is equal to the amount of both member and state contributions on the compensation paid to you. If you are also participating in TRS-Care, your employer will owe a health benefit surcharge to TRS on your employment.

**QUESTION:** Do you have to pay any part of the surcharges?

**SHORT ANSWER:** TRS cannot accept the payment from you, but your employer may want to negotiate for you to reimburse it for a portion or all of the pension and/or health benefit surcharges.



### **But, you may also want to know:**

The state law that requires the TRS-covered employer to pay the surcharges to TRS does not state the source of the funds. TRS is aware that some employers do not hire retirees because of the surcharges on their employment and some employers require the retiree to pay all or a portion of the surcharges. While the employer must submit the surcharges to TRS along with the accompanying reports, TRS has no authority over terms of the employment relationship or compensation paid to the retiree. You may negotiate the terms of your employment with your employer without involvement from TRS.

**QUESTION:** Can you work for a third party employer that sends employees to schools to perform duties normally performed by school employees and avoid losing any of your annuity payments?

**SHORT ANSWER:** No.

### **But, you may also want to know:**

Several years ago, some TRS-covered employers were hiring retirees to perform services through third party entities in an effort to avoid the limits on employment after retirement. A third party entity is an entity or company retained by the TRS-covered employer to provide personnel that perform duties or provide services that employees of the TRS-covered employer would otherwise perform. The law was amended to provide that a retiree who is employed by a third-party entity is considered to be employed by the TRS-covered employer unless the retiree does not provide services or perform duties on behalf of the TRS-covered employer. Retirees who were hired by the third-party entity before May 24, 2003 are not affected by the change in the law. While there may be other reasons you will want to be employed by a third-party entity instead of a TRS-covered employer, do not accept employment with a third-party entity to avoid the loss of any monthly annuity or payment of the surcharges. Also, the months of employment with a third party entity



do not count toward your 12 full, consecutive calendar month break in service required to avoid losing annuities if you want to work full time with a TRS-covered employer at some time in the future.

**QUESTION:** Can you work as an independent contractor for a TRS-covered employer and avoid losing any of your annuity payments?

**SHORT ANSWER:** Yes, but your status as an independent contractor must meet all of the legal requirements for this type of work arrangement.

**But, you may also want to know:**

While employment with a TRS-covered employer as an independent contractor is not subject to the TRS laws and rules regarding employment after retirement and does not incur the surcharges, you should carefully consider whether the work arrangement meets all the legal tests for this type of relationship. Simply changing your title to independent contractor is not sufficient; there must be a true termination of your employment. Laws governing federal income tax and social security are also involved in determining whether you are an independent contractor. Seek advice from your own attorney to determine whether the work arrangement is one of an independent contractor. If you are in doubt, check with TRS.

If your employment arrangement does not meet the legal tests for independent contractor, you are considered an employee of the TRS-covered employer. If you negotiate a contract for employment with your employer prior to your retirement, you are not eligible to retire and you revoke your retirement because you did not terminate employment. If this occurs, you must return all annuity payments including any PLSO payment paid to you by TRS as well as any health benefit payments paid on your behalf by TRS-Care. You must then apply to retire again. No benefits can be paid to you until you return all benefits previously paid to you.



If your employment arrangement is negotiated **after** one full, complete calendar month after your retirement, and it does not meet the legal tests for independent contractor, you will not revoke retirement but you will be subject to the limits on employment after retirement. If you exceed the amount of time you are allowed to work without loss of annuity, you will have to repay any annuity payments that are paid in months that you exceed the limits. Your employer may owe surcharges on your employment as well.

A word of caution is offered here. While there are some tasks or projects that could be performed by independent contractors, the most common types of jobs held by retirees cannot. Examples of jobs that are **unlikely** to be suitable for performance by an independent contractor are:

- Superintendent
- Administrator
- Principal/Assistant Principal
- Teacher
- Coach
- Administrative Support Personnel

Remember the old adage: “If it sounds too good to be true, it probably is.”



# NOT YET RETIRED:

## Normal-Age Retirees

If you will be a normal-age retiree, the information in this section is for you. You must wait one full, complete calendar month before returning to employment with an employer covered by TRS but you may negotiate before you retire for one-half time employment that will begin after the one full, complete calendar month of absence. You cannot, however, negotiate for full-time employment before you retire and before one full, complete calendar month after you retire, unless the full-time employment begins after a 12 full, consecutive calendar month break in service.

**NOTE:** *If you do not observe the restriction on contracting for full-time employment, you revoke your retirement. If you revoke your retirement, you will have to repay all of the annuity payments you received from TRS including any Partial Lump Sum Option (PLSO) or Deferred Retirement Option Plan (DROP) payments and also repay any health benefit payments paid by TRS-Care on your behalf.*

With that caveat stated, here is important information for you to consider:

**QUESTION:** When can you negotiate with a TRS-covered employer about returning to work after retirement?

**SHORT ANSWER:** You can negotiate at any time, before or after retirement, for employment on a one-half time or less basis. You cannot negotiate for full-time employment until after you retire and after you observe the required one full, complete calendar month absence from service unless the full-time employment begins after a 12 full, consecutive calendar month break in service.



### But, you may also want to know:

All retirees must wait one full, complete calendar month after retirement before returning to work. **However, normal-age retirees can negotiate before retiring for employment on a one-half time or less basis.** If you negotiate for full-time employment before you retire or during the one full, complete calendar month following your retirement (unless the full-time employment begins after a 12 full, consecutive calendar month break in service after your retirement), you revoke your retirement. You revoke your retirement because Texas law considers you not to have terminated employment under these circumstances and you are not eligible to retire if you have not terminated employment. If you revoke retirement you are not eligible to receive any annuity payments or to have health benefit payments made by TRS-Care on your behalf. If you want to negotiate for full-time employment that begins before the 12 full, consecutive calendar month break in service, wait until you have been absent from employment with all TRS-covered employers for one full, calendar month.

After you effectively retire by terminating employment and waiting one full, complete calendar month before returning to work, you may return to full-time employment. You will lose your monthly annuity each month you work full-time (greater than one-half time) if you do not have a 12 full, consecutive calendar month break in service after the date of your retirement. Working in any capacity, including as a substitute, for a TRS-covered employer interrupts the 12 full, consecutive calendar month break in service required for full-time employment without a loss of annuity and you must start over counting the 12 month break in service required for full-time employment. The **CONSEQUENCE of working full time** without a 12 full, consecutive calendar month break in service is that you lose your annuity payment for every month that you work full time or take paid leave. The **CONSEQUENCE of negotiating for full-time employment** before one full, complete calendar month after you retire is you revoke your retirement if the full-



## Not Yet Retired — Normal-Age Retirees

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time employment starts before the end of a 12 full, consecutive calendar month break in service.

CONSEQUENCE OF WORKING FULL-TIME WITHOUT A 12 FULL, CONSECUTIVE CALENDAR MONTH BREAK IN SERVICE – LOSE YOUR ANNUITY FOR THE MONTH

CONSEQUENCE OF NEGOTIATING TOO SOON FOR FULL-TIME EMPLOYMENT THAT BEGINS BEFORE A 12 FULL, CONSECUTIVE CALENDAR MONTH BREAK IN SERVICE AFTER YOUR RETIREMENT – REVOKE YOUR RETIREMENT

Your retirement date for TRS purposes is always the last day of the month. Your retirement date and your last day of employment are not always the same day. Remember to use the last day of the month that you retire from TRS when determining when you can negotiate that full-time contract.

REMEMBER: If you return to work on a full-time basis without a 12 full, consecutive calendar months break in service after the effective date of your retirement, you will forfeit your monthly annuity every month you work more than one-half time.

**QUESTION:** What happens if you have a contract or agreement in place for full-time employment before you resign and retire?

**SHORT ANSWER:** Unless your employment does not begin until after a 12 full, consecutive calendar month break in service after you retire, you revoke your retirement and must return all annuity payments, including any PLSO or DROP payments, and any health benefits paid on your behalf by TRS-Care because you have not terminated your employment and you are not eligible to retire.



### But, you may also want to know:

If you revoke your retirement by having a prohibited contract or agreement for full-time work in place before the end of the one full, complete calendar month after your retirement date, you must return all annuity payments you received from TRS including any PLSO or DROP payments and any health benefit payments paid on your behalf by TRS-Care. You must then submit a new application to TRS to retire and start the retirement process again. TRS cannot pay you any benefits under the new retirement until you pay back all of the benefits you already received. The only exception to waiting until after one full, calendar month after you retire to negotiate for full-time employment is if the employment does not begin until after a 12 full, consecutive calendar month break in service AND you do not negotiate for employment in any capacity with any TRS-covered employer for employment to begin during this break in service. **While you may want to make sure you can return to full-time employment before you submit your resignation and retire, do not risk it.** Wait until after one full, complete calendar month after you retire to talk to the TRS-covered employer about returning to work in that full-time position.

**QUESTION:** Can working in any other way cause you to revoke your retirement?

**SHORT ANSWER:** Yes, if you return to work at any time during the one full, complete calendar month following the month of your retirement you revoke your retirement.

### But, you may also want to know:

All retirees must wait one full, complete calendar month after retirement before returning to work. Your retirement date is always the last day of the month in which you retire. If you work into June, but no later than June 15, and retire May 31 as allowed by law, you have to wait until August 1 to return to work. Remember, you must wait one full,



## Not Yet Retired — Normal-Age Retirees

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complete calendar month. Because you worked in June, you cannot count the remainder of June toward this requirement. In this example, July would be the first full, complete calendar month after you stop working and retire.

If you revoke your retirement by returning to work too soon, you will have to repay any annuity payments including any PLSO or DROP payments and any health benefit payments paid on your behalf by TRS-Care. You will have to submit a new application to TRS to retire and start the process over again.

**QUESTION:** How much time can you work without losing any annuity payments?

**SHORT ANSWER:** You can work as follows without losing any annuity payments:

- as a **SUBSTITUTE**, without any limit on the number of days;
- as much as **ONE-HALF TIME**, each month;
- in a **COMBINATION OF SUBSTITUTE AND ONE-HALF TIME** work, provided the total number of days worked in each calendar month does not exceed one-half the number of work days in that calendar month;
- in **FULL-TIME EMPLOYMENT** (greater than one-half time) after a break in service of 12 full, consecutive calendar months after the date of retirement.

### **But, you may also want to know:**

The school year for all retirees is from September 1 to August 31—every year, for every retiree, and for every employer. It does not matter when the school instructional year begins for your employer.

**A SUBSTITUTE** for TRS purposes is a person who serves on a temporary basis in the place of a **current** employee. The position filled by the retiree cannot be vacant and be considered a substitute position. The reason the position is vacant or the length of time the position is



expected to be vacant does not change the outcome: **a retiree cannot be considered as a substitute when serving in a vacant position.** As a retiree, you may serve in a vacant position, but you will be considered by TRS under another employment type such as full time or half time rather than as a substitute. Also, working any part of a day as a substitute counts as working a full day. If you combine substitute work and one-half time work in the same calendar month, you cannot substitute an unlimited number of days in that month. This is important to know if you combine substitute work with one-half time employment as described below.

**ONE-HALF TIME EMPLOYMENT** is working no more than the equivalent of **four** clock hours for each work day in that calendar month (each Monday - Friday in the calendar month, including holidays and days the employer is closed for business). **This standard applies to all positions.** If your employment is measured in class hours or semester hours rather than clock hours (typically applies to higher education employment), each course or semester hour will count as two clock hours in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If your employer has established a greater amount of preparation time for each course or semester hour, your employer's established standard will be used to determine the number of course or semester hours you may teach without loss of annuity. As long as you do not exceed the equivalent of four clock hours for each work day in that calendar month, you will not forfeit the monthly annuity for that month. The total number of hours allowed for that month may be worked in any arrangement or schedule. For example, if there are 21 work days that month, you may work as much as 84 hours that month (21 days X 4 hours per day=84 hours). You may work the 84 hours using any work schedule, including working 40 hours one week and 44 hours another week; working **four** hours per day for each of the 21 days; or any other schedule that results in you working no more than 84 hours that month.



Because there are different numbers of work days each calendar month, you will have to know how many work days are in that month to know how many hours you may work that month under the one-half time exception.

You can **COMBINE EMPLOYMENT AS A SUBSTITUTE AND ONE-HALF TIME EMPLOYMENT** during the same school year or even the same calendar month. For instance, you may work one month as a substitute and the next month work one-half time. You may also combine substitute work and one-half time work in the same calendar month, but you cannot work more than one-half the number of work-days in that month without losing an annuity payment. This means if you combine substitute work and one-half time work in the same calendar month, you cannot substitute an unlimited number of days in that month. Also, working any part of a day as a substitute counts as working a full day when calculating the total number of days you can work. This is important to know if you combine substitute work with one-half time work in the same calendar month. To maximize the number of hours you can work in a month in which you combine one-half time and substitute work, try to work as many hours as possible on the days you work. Remember – when combining one-half time and substitute work in the same calendar month, the number of hours you work does not matter; you are limited by only the number of days you can work when you combine the two.

**FULL-TIME EMPLOYMENT** is employment that is greater than one-half time. Full-time employment cannot begin until you have a 12 full, consecutive calendar month break in service after your date of retirement. Working full time without taking a 12 full, consecutive calendar month break in service will result in the loss of your monthly annuity payment for each month you work full time. This means to avoid losing an annuity payment because of full-time employment you cannot work in ANY capacity for a TRS-covered employer for 12 full, consecutive calendar months. Working as a substitute or one-half time in any month



counts as work when determining if you observed a 12 full, consecutive calendar month break in service. The 12 full, consecutive calendar month break in service does not have to be the first 12 consecutive months after retirement, but the break in service must be 12 full, consecutive calendar months at some point prior to returning to full-time employment. You will forfeit your annuity for each month you work full time if you have not had the required break in service. Remember, full time means more than one-half time and one-half time is limited to no more than the equivalent of **four** hours for each work day that month.

**QUESTION:** Can you work full time without losing your annuity?

**SHORT ANSWER:** Yes, but only after a 12 full, consecutive calendar month break in service.

**But, you may also want to know:**

Prior to June 17, 2011, retirees could work up to **six** months of full-time employment without forfeiting an annuity. That opportunity is no longer available. Retirees who retired before January, 2011 may work an unlimited amount of time without forfeiting an annuity but all retirees who retired January, 2011 or after must have a 12 full, consecutive calendar month break from all employment with any TRS-covered employer before working full time. If you do not have a 12 full, consecutive calendar month break in service you will lose your annuity for each month you work full time.

**QUESTION:** Can you combine full-time employment with one-half time employment or substitute service without losing an annuity?

**SHORT ANSWER:** Yes, you can combine full-time employment with any other type of employment without losing an annuity if you have a 12 full, consecu-



tive calendar month break in service after the date of retirement.

### **But, you may also want to know:**

You can only work full time without forfeiting an annuity if you have a 12 full, consecutive calendar month break in service. Once you have observed this required break in service, you can work for a TRS-covered employer in any capacity and for any amount of time without losing an annuity. In planning your retirement you may want to consider whether returning to work with a TRS-covered employer at the end of a 12 full, consecutive calendar month break in service is a viable option or perhaps working for another employer that is not covered by TRS for 12 full, consecutive calendar months after you retire would help you to optimize the opportunity for later full-time employment with a TRS-covered employer.

**QUESTION:** How are sick leave days, personal leave days, compensatory leave days, and vacation leave days counted in determining how much time you have worked?

**SHORT ANSWER:** Paid leave time is counted the same as if you worked. It doesn't matter what type of paid leave is taken.

### **But, you may also want to know:**

In determining whether you worked in a given calendar month, TRS considers paid time off the same as time worked. Your employer is required to report to TRS the paid time off as if you worked.

**QUESTION:** What happens if you work more time than you are allowed?

**SHORT ANSWER:** If you are working under the one-half time exception or combining substitute work and work under the one-half time exception in



the same calendar month, you will lose your annuity for each month that you exceed the amount of time you are allowed to work. If you do not observe a 12 full, consecutive calendar month break in all service with any TRS-covered employer, you will forfeit your annuity for any month in which you work more than the equivalent of **four** hours for each work day in the month, unless you are working only as a substitute. Working more than the equivalent of **four** hours for each work day in the month is full-time employment for the purpose of employment after retirement. If you combine one-half-time employment and work as a substitute in the same calendar month, you may work one-half the number of work days in that month without forfeiting your annuity.

**But, you may also want to know:**

Each TRS-covered employer is required to submit a report to TRS each month indicating the names of the retirees employed and the amount of time they worked. TRS reviews the report and takes steps to stop the annuity payment if you exceed the amount of time available to work. If the annuity payment is already sent to you, you must return the payment.

**QUESTION:** Will your employer pay surcharges because of your employment?

**SHORT ANSWER:** If you are working one-half time or more and your employment is not temporary, your employer must pay the surcharge to TRS.

**But, you may also want to know:**

Your employer is required to pay surcharges to TRS on retirees

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## Not Yet Retired — Normal-Age Retirees

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working in positions covered by TRS and who retired after September 1, 2005. Regular employment covered by TRS is employment that is

- one-half or more of the full-time equivalent for that position or a minimum of 15 hours per week if there is no full-time equivalent position and
- expected to last 4½ months or more.

Employment not covered by TRS and not subject to the surcharges includes:

- Substitute service (the position cannot be vacant);
- Temporary employment (employment that is expected to last less than 4½ months); and
- Less than one-half time employment (employment that is less than half of the full-time equivalent position or less than 15 hours per week if there is no full-time equivalent). Even as little as one hour less than one-half time prevents the surcharge payment.

**IMPORTANT DISTINCTION.** It is important to note that there are two standards for one-half time employment: one standard is used by your employer to determine if surcharges are owed to TRS because of your employment in a TRS eligible position and the other half-time standard is used to determine how much time you may work each month without forfeiting your monthly annuity. The two standards are not interchangeable.

### Employer Surcharges:

Standard – The retiree is working in a TRS-eligible position.

### No loss of your monthly annuity:

Standard - You may work the equivalent of **four** hours for each work day in that calendar month (each Monday-Friday, including holidays and days your employer is closed for business).

**In order for your employer to avoid paying the surcharges,** if your employment is expected to continue for 4½ months or more, you



must work less than one-half of the full-time load. If there is no full-time equivalent for your position, you must work less than 15 hours per week in order for your employer to avoid the surcharges.

The amount of the pension surcharge is equal to the amount of both member and state contributions on the compensation paid to you. If you are also participating in TRS-Care, your employer will owe a health benefit surcharge to TRS.

**QUESTION:** Do you have to pay any part of the surcharges?

**SHORT ANSWER:** TRS cannot accept the payment from you, but your employer may want to negotiate for you to reimburse it for a portion or all of the pension and/or health benefit surcharges.

**But, you may also want to know:**

The state law that requires the TRS-covered employer to pay the surcharges to TRS does not state the source of the funds. TRS is aware that some employers do not hire retirees because of the surcharges on their employment and that some employers require the retiree to pay all or a portion of the surcharges. While the employer must submit the surcharges to TRS along with the accompanying reports, TRS has no authority over terms of the employment relationship or compensation paid to the retiree. You may negotiate the terms of your employment with your employer without involvement from TRS.

**QUESTION:** Can you work for a third party employer that sends employees to schools to perform duties normally performed by school employees and avoid losing any of your annuity payments?

**SHORT ANSWER:** No.

**But, you may also want to know:**

Several years ago, some TRS-covered employers were hiring retirees

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to perform services through third party entities in an effort to avoid the limits on employment after retirement. A third party entity is an entity or company retained by the TRS-covered employer to provide personnel that perform duties or provide services that employees of the TRS-covered employer would otherwise perform. The law was amended to provide that a retiree who is employed by a third party entity is considered to be employed by the TRS-covered employer unless the retiree does not provide services or perform duties on behalf of the TRS-covered employer. Retirees who were hired by the third-party entity before May 24, 2003 are not affected by the change in the law. While there may be other reasons you will want to be employed by a third-party entity instead of a TRS-covered employer, do not accept employment with a third-party entity to avoid the loss of any monthly annuity or payment of the surcharges. Also, the months of employment with a third-party entity do not count toward your 12 full, consecutive calendar month break in service required to avoid losing annuities because of future full-time employment with a TRS-covered employer.

**QUESTION:** Can you work as an independent contractor for a TRS-covered employer and avoid losing any of your annuity payments?

**SHORT ANSWER:** Yes, but your status as an independent contractor must meet all of the legal requirements for this type of work arrangement.

**But, you may also want to know:**

While employment with a TRS-covered employer as an independent contractor is not subject to the TRS laws and rules regarding employment after retirement and does not incur the surcharges, you should carefully consider whether the work arrangement meets all the legal tests for this type of relationship. Simply changing your title to independent contractor is not sufficient; there must be a true termination of your employment. Laws governing federal income tax and social security are also involved in determining whether you are an independent contrac-



tor. Seek advice from your own attorney to determine whether the work arrangement is one of an independent contractor. If you are in doubt, check with TRS.

If your employment arrangement does not meet the legal tests for independent contractor, you are considered an employee of the TRS-covered employer. If your contract is for full-time employment that begins before a 12 full, consecutive calendar month break in service and negotiated prior to your retirement, you are not eligible to retire and you revoke your retirement because you did not terminate employment. If this occurs, you must return all annuity payments including any PLSO or DROP payments paid to you by TRS as well as any health benefit payments paid on your behalf by TRS-Care. You must then apply to retire again. No benefits can be paid to you until you return all benefits previously paid to you.

If your employment arrangement is negotiated **after** one full, complete calendar month after your retirement, and it does not meet the legal tests for independent contractor, you will not revoke retirement but you will be subject to the limits on employment after retirement. If you exceed the amount of time you are allowed to work without loss of annuity, you will have to repay any annuity payments that are paid in months that you exceed the limits. Your employer may be responsible for paying surcharges on your employment.

A word of caution is offered here. While there are some tasks or projects that could be performed by independent contractors, the most common types of jobs held by retirees cannot. Examples of jobs that are **unlikely** to be suitable for performance by an independent contractor are:

- Superintendent
- Administrator
- Principal/Assistant Principal
- Teacher
- Coach
- Administrative Support Personnel

Remember the old adage: “If it sounds too good to be true, it probably is.”

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## ALREADY RETIRED

If you are retired and considering whether returning to work for an employer covered by TRS is possible and how your retirement annuity might be affected by working, the information in this section is relevant to your decision. Do you want to work full time or part time? Will you lose any annuity payments? These questions and others are answered in this section.

If you have already retired and have not worked for at least the one full, complete calendar month after retirement required of all retirees, you may now negotiate with any TRS-covered employer about returning to work. If you are still within the one full, complete calendar month from your retirement date, please read the information in the “NOT YET RETIRED” section for information relevant to your situation. If your question is not covered by this section, contact TRS for information regarding your situation.

### RETIRED BEFORE JANUARY 1, 2011

If you retired before January 1, 2011 as a service retiree, you may work as follows without losing any annuity payments:

- any position;
- any employer; and
- any amount of time

In summary: no limits on employment; no loss of annuity if you retired BEFORE January 1, 2011.

**NOTE:** *The surcharges that must be paid by TRS-covered employers for employing certain retirees may apply to your employment if you retired AFTER September 1, 2005.*



## ALREADY RETIRED: Early-Age and Normal-Age Retirees

**NOTE:** *These guidelines apply only to those who retired AFTER January 1, 2011. If you retired BEFORE January 1, 2011, please see the previous page.*

Whether you are an early-age retiree, meaning your annuity is reduced because you didn't meet the criteria for normal-age retirement or you are a normal-age retiree, the information in this section is for you. The opportunities for work with a TRS-covered employer that do not result in losing any annuity payments have changed recently. Please read the information in this section carefully. If you do not see your employment opportunity addressed in this section, contact TRS for further information. Here is information for you to consider:

**QUESTION:** When can you negotiate with a TRS-covered employer about returning to work?

**SHORT ANSWER:** Any time. (This answer assumes that you have already completed the one full, complete calendar month break in service after your retirement.)

### **But, you may also want to know:**

Once you have completed the required one full, complete calendar month break in service after retirement, you may negotiate for any type of future employment with a TRS-covered employer – whether you are an early-age retiree or normal-age retiree.

If you have not completed the one full, complete calendar month break in service and you are an early-age retiree, you must wait until after the required break in service to negotiate an agreement for any type of employment with a TRS-covered employer. If you negotiate for



employment before that time, you revoke your retirement and must repay any annuity payments including any PLSO payment and any health benefit payments paid on your behalf by TRS-Care. You revoke your retirement because Texas law considers you not to have terminated employment under these circumstances and you are not eligible to retire if you have not terminated employment. If you revoke retirement you are not eligible to receive any annuity payments or to have health benefits made by TRS-Care on your behalf. You must submit a new application to TRS to retire and start the retirement process again. TRS cannot pay you benefits based on your new retirement until the amounts owed are paid. If this is your situation, please refer to the section “NOT YET RETIRED” for information. After the one full, complete calendar month break in service, early-age retirees may negotiate for any type of employment with a TRS-covered employer without revoking retirement.

If you are a normal-age retiree and you have not completed the required one full, complete calendar month break in service, you may only negotiate for one-half time employment or full-time employment that begins after the required break of 12 full, consecutive calendar months from employment with all TRS covered employers. If you negotiate before you retire or during the one full, complete calendar month break in service for full-time employment (unless the employment begins after the 12 full, consecutive calendar month break in service), you revoke your retirement. You revoke retirement because Texas law considers you not to have terminated employment under these circumstances and you are not eligible to retire if you have not terminated employment. If you revoke retirement you are not eligible to receive any annuity payments or to have health benefit payments made by TRS-Care on your behalf. If you revoke your retirement you must repay any annuity payments including any PLSO payment and any health benefit payments paid on your behalf by TRS-Care. You must submit a new application to TRS to retire and start the retirement process again. TRS cannot pay you benefits based on your new retirement until the amounts owed are paid.



If this is your situation, please refer to the section “NOT YET RETIRED” for information.

Again, whether you are an early-age retiree or normal-age retiree, if you have observed the one full, complete calendar month of required absence from service after retirement, you may negotiate a contract or agreement for employment to begin any time.

**QUESTION:** How much time can you work without losing any annuity payments?

**SHORT ANSWER:** You can work as follows without losing any annuity payments:

- as a **SUBSTITUTE**, without any limit on the number of days;
- as much as **ONE-HALF TIME**, each month;
- in a **COMBINATION OF SUBSTITUTE AND ONE-HALF TIME** work, provided the total number of days worked in each calendar month does not exceed one-half the number of work days in that calendar month;
- in **FULL-TIME EMPLOYMENT** (greater than one-half time) after a 12 full, consecutive calendar month break in service after the date of retirement.

**But, you may also want to know:**

The school year for all retirees is from September 1 to August 31—every year, for every retiree, and for every employer. It does not matter when the school instructional year begins for your employer.

**A SUBSTITUTE** for TRS purposes is a person who serves on a temporary basis in the place of a **current** employee. The position filled by the retiree cannot be vacant and be considered a substitute position. The reason the position is vacant or the length of time the position is expected to be vacant does not change the outcome: **a retiree cannot be considered as a substitute when serving in a vacant position.** As a retiree, you may serve in a vacant position, but you will



be considered by TRS under another employment type such as full time or half time rather than as a substitute. Also, working any part of a day as a substitute counts as working a full day. If you combine substitute work and one-half time work in the same calendar month, you cannot substitute an unlimited number of days in that month. This is important to know if you combine substitute work with one-half time employment as described below.

**ONE-HALF TIME EMPLOYMENT** is working no more than the equivalent of 4 clock hours for each work day in that calendar month (each Monday - Friday in the calendar month, including holidays and days the employer is closed for business). This standard applies to all positions. If your employment is measured in course hours or semester hours rather than clock hours (typically applies to higher education employment), each course or semester hour will count as two clock hours in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If your employer has established a greater amount of preparation time for each course or semester hour, your employer's established standard will be used to determine the number of course or semester hours you may teach without loss of annuity. As long as you do not exceed the equivalent of **four** clock hours for each work day in that calendar month, you will not forfeit the annuity for that month. The total number of hours allowed for that month may be worked in any arrangement or schedule. For example, if there are 21 work days that month, you may work as much as 84 hours that month (21 days X 4 hours per day = 84 hours). You may work the 84 hours using any work schedule, including working 40 hours one week and 44 hours another week; working **four** hours per day for each of the 21 days; or any other schedule that results in you working no more than 84 hours that month. Because there are different numbers of work days each calendar month, you will have to know how many work days are in that month to know how many hours you may work that month under the one-half time exception.



You can **COMBINE EMPLOYMENT AS A SUBSTITUTE AND ONE-HALF TIME EMPLOYMENT** during the same school year or even the same calendar month. For instance, you may work one month as a substitute and the next month work one-half time. You may also combine substitute work and one-half time work in the same calendar month, but you cannot work more than one-half the number of work days in that month without losing an annuity payment. This means if you combine substitute work and one-half time work in the same calendar month, you cannot substitute an unlimited number of days in that month. Also, working any part of a day as a substitute counts as working a full day when calculating the total number of days you can work. This is important to know if you combine substitute work with one-half time work in the same calendar month. To maximize the number of hours you can work in a month in which you combine one-half time and substitute work, try to work as many hours as possible on the days you work. Remember – when combining one-half time and substitute work in the same calendar month, the number of hours you work does not matter; you are limited only by the number of days you can work when you combine the two.

**FULL-TIME EMPLOYMENT** is employment that is greater than one-half time. Full-time employment cannot begin until you have a 12 full, consecutive calendar month break in service after your date of retirement. Working full time without taking a 12 full, consecutive calendar month break in service will result in the loss of your monthly annuity payment for each month you work full time. This means to avoid losing an annuity payment because of full-time employment you cannot work in ANY capacity for a TRS-covered employer for 12 full, consecutive calendar months. Working as a substitute or one-half time in any month counts as work when determining if you observed a 12 full, consecutive calendar month break in service. The 12 full, consecutive calendar month break in service does not have to be the first 12 consecutive calendar months after retirement, but the break in service must be 12



full, consecutive calendar months at some point prior to returning to full-time employment. You will forfeit your annuity for each month you work full time if you have not had the required break in service. Remember, full time means more than one-half time and one-half time is limited to no more than the equivalent of **four** hours for each work day that month.

**QUESTION:** Can you work full time without losing your annuity?

**SHORT ANSWER:** Yes, but only after a 12 full, consecutive calendar month break in service.

**But, you may also want to know:**

Prior to June 17, 2011, retirees could work up to **six** months of full-time employment without forfeiting an annuity. That opportunity is no longer available. Retirees who retired before January, 2011 may work an unlimited amount of time without forfeiting an annuity but all retirees who retired January, 2011 or after must have a 12 full, consecutive calendar month break from all employment with any TRS covered employer before working full time. If you do not have a 12 full, consecutive calendar month break in service you will lose your annuity for each month you work full time (more than the equivalent of **four** hours for each work day in that calendar month).

**QUESTION:** Can you combine full-time employment with one-half time employment or substitute service without losing an annuity?

**SHORT ANSWER:** Yes, you can combine full-time employment with any other type of employment without losing an annuity if you have a 12 full, consecutive calendar month break in service after the date of retirement.

**But, you may also want to know:**



You can only work full time without forfeiting an annuity if you have a 12 full, consecutive calendar month break in service. Once you have observed this required break in service, you can work for a TRS-covered employer in any capacity and for any amount of time without losing an annuity. In planning your retirement you may want to consider whether returning to work with a TRS-covered employer at the end of a 12 full, consecutive calendar month break in service is a viable option or perhaps working for another employer that is not covered by TRS for 12 full, consecutive calendar months after you retire would help you to optimize the opportunity for later full-time employment with a TRS-covered employer.

**QUESTION:** How are sick leave days, personal leave days, compensatory leave days, and vacation leave days counted in determining how much time you have worked?

**SHORT ANSWER:** Paid leave time is counted the same as if you worked. It doesn't matter what type of paid leave is taken.

**But, you may also want to know:**

In determining whether you worked in a given calendar month, TRS considers paid time off the same as time worked. Your employer is required to report to TRS the paid time off as if you worked.

**QUESTION:** What happens if you work more time than you are allowed?

**SHORT ANSWER:** If you are working under the one-half time exception or combining substitute work and work under the one-half time exception in the same calendar month, you will lose your annuity for each month that you exceed the amount of



time you are allowed to work.

**But, you may also want to know:**

If you do not observe a 12 full, consecutive calendar month break in all service with any TRS-covered employer, you will forfeit your annuity for any month in which you work more than the equivalent of **four** hours for each work day in the month, unless you are working only as a substitute. When you work as a substitute you may work an unlimited number of days without forfeiting your annuity for that month. If you combine substitute work and one-half time work in the same calendar month, you may work only one half of the number of work days that month, but you may work as many hours per day as you wish for one half the number of work days that month.

Each TRS-covered employer is required to submit a report to TRS each month indicating the names of the retirees employed and the amount of time they worked. TRS reviews the report and takes steps to stop your annuity payment if you exceed the amount of time available to work. If the annuity payment has been sent to you, you must return the payment.

**QUESTION:** Will your employer pay surcharges because of your employment?

**SHORT ANSWER:** If you retired after September 1, 2005, the surcharges are owed if you are working one-half time or more and your employment is not temporary. If you retired before September 1, 2005, the surcharges do not have to be paid.

**But, you may also want to know:**

Your employer is required to pay surcharges to TRS on retirees working in positions covered by TRS and who retired after September 1, 2005. Regular employment that is covered by TRS is employment that is



- one-half or more of the full-time equivalent for that position or 15 hours per week if there is no full-time equivalent position and
- expected to last 4½ months or more.

Employment not covered by TRS and not subject to the surcharges includes:

- Substitute service (the position cannot be vacant);
- Temporary employment (employment that is expected to last less than 4½ months); and
- Less than one-half time employment (employment that is less than half of the full-time equivalent position or less than 15 hours per week if there is no full-time equivalent position. Even as little as one hour less than one-half time prevents the surcharge payment.)

**IMPORTANT DISTINCTION.** It is important to note that there are two standards for one-half time employment: one standard is used by your employer to determine if surcharges are owed to TRS because of your employment in a TRS eligible position and the other half-time standard is used to determine how much time you may work each month without forfeiting your monthly annuity. The two standards are not interchangeable.

### Employer Surcharges:

Standard – The retiree is working in a TRS-eligible position.

### No loss of your monthly annuity:

Standard - You may work the equivalent of **four** hours for each work day in that calendar month (each Monday-Friday, including holidays and days your employer is closed for business).

**In order for your employer to avoid paying the surcharges,** if your employment is expected to continue for 4½ months or more, you must work less than one-half of the full-time load. If there is no full-time equivalent for your position, you must work less than 15 hours per week in order for your employer to avoid the surcharges.



The amount of the pension surcharge is equal to the amount of both member and state contributions on the compensation paid to you. If you are also participating in TRS-Care, your employer will owe a health benefit surcharge to TRS on your employment.

**QUESTION:** Do you have to pay any part of the surcharges?

**SHORT ANSWER:** TRS cannot accept the payment from you, but your employer may want to negotiate for you to reimburse it for a portion or all of the pension and/or health benefit surcharges.

**But, you may also want to know:**

The state law that requires the TRS-covered employer to pay the surcharges to TRS does not state the source of the funds. TRS is aware that some employers do not hire retirees because of the surcharges on their employment and that some employers require the retiree to pay all or a portion of the surcharges. While the employer must submit the surcharges to TRS along with the accompanying reports, TRS has no authority over terms of the employment relationship or compensation paid to the retiree. You may negotiate the terms of your employment with your employer without involvement from TRS.

**QUESTION:** Can you work for a third party employer that sends employees to schools to perform duties normally performed by school employees and avoid losing any of your annuity payments?

**SHORT ANSWER:** No.

**But, you may also want to know:**

Several years ago, some TRS-covered employers were hiring retirees to perform services through third party entities in an effort to avoid the limits on employment after retirement. A third party entity is an entity or



company retained by the TRS-covered employer to provide personnel that perform duties or provide services that employees of the TRS-covered employer would otherwise perform. The law was amended to provide that a retiree who is employed by a third party entity is considered to be employed by the TRS-covered employer unless the retiree does not provide services or perform duties on behalf of the TRS-covered employer. Retirees who were hired by the third-party entity before May 24, 2003 are not affected by the change in the law. While there may be other reasons you will want to be employed by a third-party entity instead of a TRS-covered employer, do not accept employment with a third-party entity to avoid the loss of any monthly annuity or payment of the surcharges. Also, the months of employment with a third-party entity do not count toward your 12 full, consecutive calendar month break in service required to avoid losing annuities because of full-time employment with a TRS-covered employer.

**QUESTION:** Can you work as an independent contractor for a TRS-covered employer and avoid losing any of your annuity payments?

**SHORT ANSWER:** Yes, but your status as an independent contractor must meet all of the legal requirements for this type of work arrangement.

**But, you may also want to know:**

While employment with a TRS-covered employer as an independent contractor is not subject to the TRS laws and rules regarding employment after retirement and does not incur the surcharges, you should carefully consider whether the work arrangement meets all the legal tests for this type of relationship. Simply changing your title to independent contractor is not sufficient; there must be a true termination of your employment. Laws governing federal income tax and social security are also involved in determining whether you are an independent contractor. Seek advice from your own attorney to determine whether the work



## Already Retired — Early-and Normal-Age Retirees

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arrangement is one of an independent contractor. If you are in doubt, check with TRS.

If your employment arrangement does not meet the legal tests for independent contractor, you are considered an employee of the TRS-covered employer.

If you are considered an employee rather than an independent contractor and if your contract was negotiated prior to your retirement and you are an early-age retiree, you were not eligible to retire and you revoke your retirement because you did not terminate employment. If this occurred, you must return all annuity payments including any PLSO payment paid to you by TRS as well as any health benefit payments paid on your behalf by TRS-Care. You must then apply to retire again. No benefits can be paid to you until you return all benefits previously paid to you.

If you are considered an employee rather than an independent contractor **and** you are a normal-age retiree **and** you negotiated for full-time employment before completing the required one full calendar month break in service (unless the employment begins after a 12 full, consecutive calendar month break in service), you revoked your retirement because you did not terminate employment. If this occurred, you must return all annuity payments, including any PLSO payment paid to you by TRS, as well as any health benefit payments paid on your behalf by TRS-Care. You must then apply to retire again. No benefits can be paid to you until you return all benefits previously paid to you. If you negotiated before completing the required one full calendar month break in service for no more than one-half time employment, you did not revoke retirement and your work is considered employment under the one-half time exception.

If your employment arrangement was negotiated **after** one full, complete calendar month after your retirement, and it does not meet the legal tests for independent contractor, you have not revoked retire-



ment but you will be subject to the limits on employment **after** retirement. If you exceed the amount of time you are allowed to work without loss of annuity, you will have to repay any annuity payments that are paid in months that you exceed the limits. Your employer may also be responsible for paying surcharges on your employment.

A word of caution is offered here. While there are some tasks or projects that could be performed by independent contractors, the most common types of jobs held by retirees cannot. Examples of jobs that are **unlikely** to be suitable for performance by an independent contractor are:

- Superintendent
- Administrator
- Principal/Assistant Principal
- Teacher
- Coach
- Administrative Support Personnel

Remember the old adage: “If it sounds too good to be true, it probably is.”



# DISABILITY RETIRED

If you are retiring due to a disability or are retired and receiving a disability retirement annuity and considering whether returning to work for an employer covered by TRS is possible and how your retirement annuity might be affected by working, the information in this section is relevant to your decision. As a disability retiree you are subject to limits on the amount of work you may perform for a TRS-covered employer without losing an annuity payment. These limits apply without regard to when you retire. In addition, for certain disability retirees, the law limits the amount of compensation you may earn from any source without losing annuity payments. Information in this section will be helpful in making your decision about returning to work. If your employment question is not covered by this section, contact TRS for information regarding your situation.

If you have already retired and have not worked for at least the one full, complete calendar month after retirement required of all retirees, you may now negotiate with any TRS-covered employer about returning to work. If you are still within the one full, complete calendar month from your retirement date you must wait until the beginning of the next month to negotiate for a return to employment with a TRS-covered employer.

**NOTE:** *If you do not observe the restrictions, you could revoke your retirement. If you revoke your retirement, you would have to repay all of the annuity payments you received from TRS and even repay any health benefit payments paid by TRS-Care on your behalf.*

**QUESTION:** When can you negotiate with the employer about returning to work after retirement?

**SHORT ANSWER:** You can negotiate with the employer AFTER one full, complete calendar month after retirement.



### But, you may also want to know:

All retirees, normal age, early age, and disability retirees, must wait one full, complete calendar month after retirement before returning to work. **However, disability retirees must also wait the full, complete calendar month before NEGOTIATING with the employer to return to work -- ANY TYPE OF WORK.** This condition is required by both state and federal law. At the time you retire, you cannot have a contract or agreement to return to work. Your retirement date and your last day of employment are not always the same day. Your retirement date for TRS purposes is always the last day of the month.

**QUESTION:** What happens if you have a contract or agreement to return to work before you retire or you negotiate a contract or agreement to return to work before the end of the full, complete calendar month after you retired?

**SHORT ANSWER:** You have not terminated all employment with a TRS-covered employer and you revoke your retirement because you were not eligible to retire.

### But, you may also want to know:

If you revoke your retirement by having a contract or agreement to return to work in place before the end of the one full, complete calendar month after your retirement date, you must return all annuity payments you received from TRS and any health benefit payments paid on your behalf by TRS-Care. You must then submit a new application to TRS to retire and start the retirement process again. TRS cannot pay you any benefits under the new retirement until you pay back all of the benefits you already received. **While you may want to make sure you can return to employment before you submit your resignation and retire, do not risk it.** Wait until after one full,



## Disability Retirees

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complete calendar month after you retired to talk to the employer about returning to work.

**QUESTION:** Can you revoke your retirement any other way by working?

**SHORT ANSWER:** Yes, if you return to work during the one full, complete calendar month following the month of your retirement.

### **But, you may also want to know:**

All retirees must wait one full, complete calendar month after retirement before returning to work. Your retirement date is always the last day of the month in which you retire. Remember, you must wait one full, complete calendar month before negotiating for employment and before returning to work. If you work into June but no later than June 15 and retire May 31 as allowed by law, you have to wait until August 1 to negotiate for employment and return to work.

If you revoke your retirement by returning to work too soon, you will have to repay any annuity payments paid to you by TRS and any health benefit payments paid on your behalf by TRS-Care. You will have to submit a new application to TRS to retire and start the process over again.

**QUESTION:** How much time can you work without losing any annuity payments?

**SHORT ANSWER:** You can work without losing any annuity payments:

- as a **SUBSTITUTE**, for up to 90 days;
- as much as **ONE-HALF TIME**, for up to 90 days; or
- in a **COMBINATION OF SUBSTITUTE AND ONE-HALF TIME** work, provided the total number of days worked in that calendar month does not exceed one half of the work days in that calendar month and all of the combined work does not exceed 90 days.



### But, you may also want to know:

The school year for all retirees is from September 1 to August 31—every year, for every retiree, and for every employer. It does not matter when the school instructional year begins for your employer.

As a disability retiree, you may work as a substitute for as many as 90 days each school year. **A SUBSTITUTE** for TRS purposes is a person who serves on a temporary basis in the place of a **current** employee. The position filled by the retiree cannot be vacant and be considered a substitute position. The reason the position is vacant or the length of time the position is expected to be vacant does not change the outcome: **a retiree cannot be considered as a substitute when serving in a vacant position.** As a disability retiree, you may serve in a vacant position, but you will be considered by TRS under another employment type such as full time or half time rather than as a substitute. Because you are limited to working as a substitute or no more than one-half time and for no more than 90 days, you could lose your annuity for any month that you work full time. Also, working any part of a day as a substitute counts as working a full day. This is important to know if you combine substitute work with one-half time employment in the same calendar month as described below.

For disability retirees, **ONE-HALF TIME EMPLOYMENT** is working no more than the equivalent of **four** clock hours for each work day in that calendar month (each Monday - Friday in the calendar month, including holidays and days the employer is closed for business). This standard applies to all positions. If your employment is measured in course hours or semester hours rather than clock hours (typically applies to higher education employment), each course or semester hour will count as two clock hours in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If the employer has established a greater amount of preparation time for each course or semester hour, the employer's established standard will be used to determine the number of course or semester



## Disability Retirees

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hours a retiree may teach without loss of annuity.

As long as the retiree does not exceed the equivalent of **four** clock hours for each workday in that calendar month, the retiree will not forfeit the monthly annuity. The total number of hours allowed for that month may be worked in any arrangement or schedule. However, you must keep in mind that disability retirees are limited to working only 90 days each school year. You may want to consider working the hours allowed for one-half time employment on the fewest number of days each month to maximize the hours available for work under the 90-day limit. For example, if there are 20 work days that calendar month, you may work 80 hours that month under the one-half time exception (20 work days X 4 hours per day = 80 hours total for the month). If you work **eight** hours each day for 10 days that month, you will have worked the maximum allowed under the one-half time exception without forfeiting your annuity for that month and worked only 10 of the 90 days you are allowed to work during that school year. If instead you worked **four** hours each day that same month, you will have worked the 80 hours allowed for that calendar month, but you will have worked 20 of the 90 days you are allowed to work that school year as a disability retiree.

You can **COMBINE EMPLOYMENT AS A SUBSTITUTE AND ONE-HALF TIME EMPLOYMENT** during the same school year or even the same calendar month. For instance, you may work one month as a substitute and the next month work one-half time. You may also combine substitute work and one-half time work in the same calendar month, but you cannot work more than one-half the number of workdays in that calendar month without losing an annuity payment. If you work any part of the day as a substitute, that day counts as one of the 90 days you are allowed to work under either capacity. To maximize the number of hours you can work in a month in which you combine one-half time and substitute work, try to work as many hours as possible on the days you work. Remember – when combining one-half time and substitute work in the same calendar month, the number of hours you



work does not matter; you are limited only by the number of days you can work when you combine the two.

**QUESTION:** Can you work full time without losing your annuity?

**SHORT ANSWER:** No, **unless you are in the three-month TRIAL WORK PERIOD**, working full-time in any month will result in you losing your disability annuity for that month.

**But, you may also want to know:**

You will lose your annuity for any month that you work in a full-time position as well as any month you work in excess of 90 days, beginning with the month you work the 91st day of substitute work, one-half time employment, or a combination of the two. In addition, the full-time employment will count towards the 90-day limit on employment. However, you may be eligible for a three-month TRIAL WORK PERIOD of full-time employment.

As a disability retiree you are allowed a one-time trial work period of up to three consecutive months of full-time employment to see if you are able to return to full-time work. You designate the time period and the trial work period can be up to three consecutive months. The trial period can be all in one school year or span two school years. Also, the trial period must begin no earlier than the school year that begins after your effective date of retirement. For example, if you retired August 31, because you must not work for a TRS-covered employer for one full calendar month following your retirement and you must wait until the school year following your retirement to begin the trial work period, your trial period can begin no earlier than October 1. You must notify TRS in writing on form TRS 118D (Employment After Retirement Disability Election) that you want to take advantage of this trial work period of full-time employment and the form must be received by TRS prior to the end of the three-month trial period. While working under this trial work



## Disability Retirees

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period, working any portion of a month counts as working a full month. If you continue working full-time after the trial work period has ended, your disability retirement will be revoked and you will be returned to active membership. The three-month trial work period is in addition to the 90 days you are allowed to work as a substitute on a one-half time basis, or in a combination of the two.

**QUESTION:** What happens if you work more than 90 days as a substitute, on a one-half time basis, or in a combination of the two?

**SHORT ANSWER:** You will lose your annuity for the month in which the 91st day is worked and for any additional month in which work occurs during that school year.

### **But, you may also want to know:**

Although you may forfeit your annuity payment for any month that you work in excess of the 90 days allowed, your annuity will be paid for the remaining months of the school year if you do not work any additional time.

**QUESTION:** Can you lose your annuity if you earn compensation from any source of employment, including a TRS-covered employer, while you are on disability retirement?

**SHORT ANSWER:** Yes, if you applied for disability retirement after August 31, 2007, your effective date of retirement is after August 31, 2007, and your compensation is the greater of \$40,000 or your highest salary in any school year before you retired.

### **But, you may also want to know:**



If you retired before August 31, 2007, or applied for disability retirement before August 31, 2007, there is no limit on the amount of money you can earn while receiving a disability retirement annuity. This is true without regard to the source of the compensation. However, keep in mind that you are limited to working for a TRS-covered employer only 90 days as a substitute, one-half time, or a combination of the two without losing an annuity. You may also work full time for up to three consecutive months during a one-time trial work period without losing an annuity. The requirements for the three-month trial work period are discussed earlier in this section in response to the question about working full time. While there is no limit on the amount of compensation for you if you retired before August 31, 2007 or applied to retire before August 31, 2007, there is the 90-day limit on the number of days of employment with a TRS-covered employer.

If your retirement date is after August 31, 2007 and your retirement application was received after August 31, 2007, there is also a limit on the amount of annual compensation you may earn while receiving disability retirement benefits. The compensation cap is based on your earnings during a calendar year. The limit on compensation applies to compensation earned the first full calendar year that begins following the effective date of your retirement. For example, if you retired in May, the first full calendar year does not begin until January following your retirement.

The compensation limit includes compensation for any work performed for any employer including a TRS-covered employer, self-employment, work as an independent contractor, and profit from a business. The limit on compensation is the greater of the amount of the highest salary received by the retiree in any school year before disability retirement or \$40,000. This limit does not apply to retirees receiving gross disability retirement benefits of \$2,000 or less annually. If you are subject to the cap, you must report the compensation to TRS by May 1 of the calendar year following the year in which the compensation was



## Disability Retirees

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earned and you must report the compensation on the form required by TRS. TRS may audit the report and request supporting documentation, including your tax returns, W-2 forms, 1099 forms, and other employment payroll records as necessary to verify the income reported. TRS may also use other sources of information to identify retirees receiving compensation in excess of the limit. For example, if you retired in April 2010, the first full calendar year that begins after you retired begins in January 2011 following your retirement. If your annuity payments from TRS exceed \$2,000 and you earned additional compensation during the calendar year 2011 that exceeded the greater of your highest salary from a TRS-covered employer before you retired or \$40,000, your first report is due to TRS by May, 2012.

If you exceed the amount of compensation allowed, you will lose your disability annuity payment. If you have TRS-Care coverage, you will be required to pay for the full cost of your coverage. TRS will resume paying your annuity payments after receiving a report from you that the compensation has ceased or decreased below the established limit. This report must be made on a form prescribed by TRS.

If you are subject to the compensation limit, keep in mind that you are also limited, if working for a TRS-covered employer, to working only 90 days as a substitute, one-half time, or a combination of the two. Compensation earned while working the 90 days is included in the compensation limit. Further, if you work full time for the three-month trial period, compensation you earn while working full time is included in the compensation limit. Finally, if you work 90 days as a substitute, one-half time, or a combination of the two, then work full time for up to three months in the trial period, all compensation received in the same calendar year must be used in determining if the compensation limit is exceeded.





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