



The procedural requirements for rehiring retirees

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

Rehiring retirees is an option that many school districts consider. In some districts, these decisions are controversial, in others they are not. Whether it is wise to rehire a retiree is a decision best left to each individual board of education based on the facts and circumstances involved. Boards of education that choose to rehire employees who have retired from the school district must take several steps prior to re-employment (Ohio Revised Code (RC) Sections 3307.353 and 3309.345 and Ohio Administrative Code (OAC) Sections 3307:1-13-03 and 3309-1-61).

What does the law say?

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

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

Who is affected?

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

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

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

How do boards of education comply with the rule?

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

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

The easiest way to count this is to determine the date the board will rehire the individual (the date of the board action to re-employ, not the date the person starts back to work¹). Then, count back 60 days from that date and that is the deadline to publish the public notice. Count back 30 and 15 days from the date the board will act to rehire. That two-week period is the time period in which the board must have the public meeting on the issue of the person being re-employed. It may be possible to have this meeting at the board’s regularly scheduled meeting. If not, the board will need to call a special meeting. Once the date of the public meeting is selected, it must be included in the public notice sent out 60 days prior to the meeting in which the board will act to rehire.

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

The most confusing thing about the retire-rehire law is determining which date to use to start counting. The above description uses the date the board acts to employ an individual. Some persons might interpret the law as using the date the re-employed retiree is to begin work, rather than the date of board action. It seems more consistent with the purpose of the statute to use the former date. For example, suppose that a board wishes to re-employ a retired principal in the same position and acts on that re-employment in June for work beginning the next school year in August. It would seem that the statute contemplates that the time for notice and hearing before the public on the issue of re-employment would occur prior to the board acting to re-employ the retired principal. Public comment and notice after the board action to employ, regardless of the date work is to begin, would be irrelevant if the board has already acted to employ the retiree. For this reason, OSBA believes boards

should use the date of board action to rehire, not the date the employee will begin work.

What must the hearing include?

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

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

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

How is the rule enforced?

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

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

OAC 3307:1-11-02 declares retirees ineligible for primary health coverage by STRS if the retiree is “employed and has access to a medical plan with prescription coverage available through the employer or if employees of that employer in comparable positions have access to a medical plan available through the employer provided the medical plan with prescription coverage available through the employer is equivalent to the medical plan with prescription coverage at the cost available to full-time employees as defined by the employer.”

¹ While interpretation of this requirement differs among some school law practitioners, OSBA has taken the position that when considering the apparent intent of the statute (that the public have opportunity to comment on the retire-rehire decision), combined with the overall statutory scheme requiring Ohio’s Sunshine Laws be liberally construed in favor of transparency, using the date of the board action to re-employ to determine the deadline for publishing notice is appropriate.

What are the collective bargaining implications?

There may be collective bargaining agreements that have provisions specifically addressing the procedures for rehiring retired employees. Collective bargaining contract provisions, if written correctly, can supersede applicable provisions of the law. If the district currently has a negotiated provision that addresses how retired employees will be rehired into the district, theoretically, the board should follow that procedure. However, if the procedure as written in the contract does not specifically state that it supersedes or replaces applicable law on point, then districts should err on the side of caution and follow the procedures outlined in the statutes.

Conclusion

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

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