

# Update

May 2015

Vol. 34 No. 4

## TEACHER RETIREMENT SYSTEM OF TEXAS

### ***Changes to rules***

State law requires the TRS Board of Trustees to review its rules in the Texas Administrative Code every four years to determine whether to readopt, readopt with revisions, or repeal said rules. TRS completed this required four-year review and readopted all rules in November 2014 but a number of the rules were readopted with revisions. Please review the summaries of the more significant changes provided below to determine what changes may be required to your procedures and reports. TRS will provide additional information in the coming months regarding specific changes that you will be required to implement. If any of the summaries are inconsistent with the rule as adopted, the adopted rule controls.

#### **Here are some of the more significant changes that may interest you:**

- Effective with the implementation of the new Pension Line of Business Phase 1 (TEAM), employers will be required to begin reporting **all** employees to TRS, not just employees eligible for TRS membership.
- Beginning Sept. 1, 2015, employers must report compensation in the month it is ***paid*** rather than the month it is earned.
- Unreported service and/or compensation may be reported to TRS as late as the school year following the school year it was rendered or paid without the member paying actuarial cost, provided the requirements of the rule are met.
- Members regularly scheduled to work fewer than five days per week may earn a year of service credit for four and one-half months of work rather than 90 days, provided four of those months are full calendar months in which the member works at least eight days and the member works an additional five days in either the preceding or following month(s).

#### **Here are rules that were amended and are currently in effect, unless noted otherwise:**

##### **§25.1 - Full-time Service**

Section 25.1 addresses the basic requirements for membership in TRS: employment for one-half or more of the standard full-time workload at a rate of pay comparable to the rate of compensation for others employed in similar positions for a period of four and one-half months or more.

The amendments clarify how TRS will count the time spent as an instructor in an online class: two clock hours for every college or semester hour assigned to the class rather than two clock hours for every hour spent teaching in the classroom or lab. The change was needed because most online classes do not require instruction to be provided in a classroom or lab setting.

Also, the changes to this rule clarify that the conversion ratio (two clock hours for every one hour in the classroom or lab) does not apply to continuing education classes, adult education classes, and/or classes taught to employees of companies. Instruction in these types of courses will be evaluated on the number of clock hours worked. The rule now specifically requires that the classes subject to the 2-to-1 conversion ratio must be taken for college credit.

The amendments to this rule also clarify the minimum number of hours employed in concurrent employment that qualify the combined employment for membership in TRS. If an employee combines work as an adjunct faculty instructor and any other type of employment, the minimum number of hours of work per week that will qualify the person for membership in TRS is 20.

**Beginning Sept. 1, 2015**, if an employee (other than an adjunct faculty member) is employed in two or more part-time positions, the minimum number of hours the employee must work in the combined positions in order to establish eligibility for membership in TRS is one half of the hours required for the full-time equivalent position that requires the greater number of hours per week.

#### **§25.21 - Compensation Subject to Deposit and Credit**

Section 25.21 provides detailed descriptions of the types of compensation that are included as creditable compensation for TRS purposes as well as the types of compensation excluded from benefit calculation. The changes adopted to §25.21(d)(3) clarify that continued payments of normal compensation while on administrative or emergency leave are creditable for TRS purposes. The changes to §25.21(d)(15) regard settlement agreements and clarify that the requirement to obtain a determination from TRS before reporting compensation paid pursuant to a settlement agreement do not apply if the compensation is normal payment of salary paid to the employee while the employee is on paid leave of any type.

#### **§25.25 - Required Deposits**

Section 25.25 establishes the rate of member contributions and requires that the employer must submit member deposits with each regular payroll report to TRS. The rule also requires that a member must make contributions on all compensation paid by a TRS-covered employer once membership is established in one or a combination of positions.

The amendments to this rule clarify that if a member has earned a year of service credit in the current school year and the member later works in the same school year for a TRS-covered employer in a position that is not eligible for TRS membership, member contributions must be made on compensation earned in the non-eligible position until the end of the school year.

#### **§25.26 - Annual Compensation Creditable for Benefit Calculation**

Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes. The most basic requirement is that it is the sum of 12 months of compensation paid from Sept. 1 through Aug. 31 for 12 months of work. This rule describes the "standard" school year now used by TRS to determine annual compensation and service credit.

However, experience with the standard school year over the last few years has highlighted the need to expressly state that the compensation must be for no more than 12 months of work and to clarify how TRS will credit compensation earned during the final school year before retirement but not yet paid by the date of retirement. The amendments also provide that if an **error** by the employer results in additional compensation being paid to the retiree after the effective date of retirement and the distribution of benefits has begun, TRS will adjust the annuity going forward from the date the correction is made and the deposits are paid to TRS. However, the corrections must be made by the end of the school year following the year of retirement.

In addition, changes to this rule to address the consequences of a change to §25.28 requiring all employers to report compensation in the month it is **paid** rather than the month it is **earned**. The requirement to report compensation when paid takes effect on Sept. 1, 2015.

TRS anticipates that as a result of changing the month compensation is reported, in the year of transition some members will lose one month of compensation credit. In that event, the rule change allows TRS to attribute an additional month of compensation to the affected member in the 2014-2015 school year for purposes of benefit calculation.

Finally, the amendments provide that for the purpose of calculating the member's highest average salary for purposes of benefit calculations, TRS will limit the comparison of the contract compensation and the

compensation paid during the standard school year to only the 2012-2013 school year rather than to all prior school years.

### **§25.28 - Payroll Report Dates**

Section 25.28 provides instruction to employers regarding the information and contributions that must be provided to TRS with each monthly payroll report. Changes to this rule include the requirement to provide information regarding compensation and employment on all employees and clarify that employers must report contract dates to TRS. Additional changes clarify that it is not necessary to seek a written determination from TRS regarding amounts paid pursuant to a settlement agreement if the payments are continuing amounts of normal compensation paid while the employee is on any type of paid leave.

Changes to §25.28(g) also provided some relief for members seeking to establish unreported service and/or compensation. For errors in reporting that occur in the same school year, employers may submit an adjustment record with the corrected information and pay the penalty interest associated with the late contributions. For errors in reporting that occurred in the prior school year, an employer must request a waiver of the requirement to report before the seventh day of the month. If approved, the corrections may be made if the employee is still employed by the same employer and compensation is still due to the employee so that the additional member contributions may be “picked-up” pre-tax in the same manner as regular member contributions. The employer must submit the corrected reports, the contributions that are due, and the interest required for late deposits and reports. The corrections must be made no later than the end of the school year following the school year in which the error occurred. Employers will no longer be allowed to make adjustments for school years earlier than the immediately preceding school year.

The changes to this rule also clarify that employers may not delay reporting compensation paid in earlier months for the purpose of pushing compensation into the final year of employment before retirement in order to avoid the consequences of the standard school year. In addition, they may not spread compensation due in one month over more than one month in order to ensure the member receives a year of service credit.

Beginning Sept. 1, 2015, the changes require that employers must report compensation to TRS in the month it is paid rather than the month it is earned. This change will standardize reporting for all TRS-covered employers and result in consistent crediting and calculation of benefits.

### **§25.34 - Membership Waiting Period**

Section 25.34 regards the 90-day waiting period for membership eligibility that was in effect from Sept. 1, 2003 through Aug. 31, 2005. While members no longer experience a delay in membership eligibility, recent changes in the law regarding retirement eligibility have been based in part on when membership began. Changes to this rule clarify that purchasing service credit for the year in which the waiting period occurred does not establish an earlier membership start date.

### **§25.35 - Employer Payments for New Members**

Section 25.35 addresses the requirement that employers must pay the state contribution amount on creditable compensation paid to new members during the first 90 days of employment in a membership eligible position. Currently, this section requires that the employer make the state contribution for the “pay period” containing the first day of eligible employment and continue making the payment through the pay period containing the 90th day of employment.

Effective Sept. 1, 2015, employers must pay the state contribution amount for the report month in which the first day of eligible employment falls and continue making the contribution through the report month containing the 90th day of employment.

### **§25.41 - Deposits for Unreported Service or Compensation**

Section 25.41 clarifies the requirement that when contributions have not been made on membership eligible employment or compensation, the member must immediately begin making contributions when the error is discovered. If the error is not corrected as described in §25.28(g), by the end of the following school year, the member must pay the actuarial cost to purchase the unreported service and/or compensation.

### **§25.131 - Required Service**

This section provides that a member must serve at least 90 days or receive paid leave for at least 90 days in order to receive a year of service credit. Amendments to this rule clarify that the member must not only work 90 days but must also receive pay for those 90 days in order to receive a year of service credit.

**Effective Sept. 1, 2015**, members who are regularly scheduled to work fewer than five days per week have an alternate standard for earning service credit. The alternate standard for those members is to serve four and one-half months; however, the member must serve at least four full calendar months during which the member must work or receive paid leave for at least eight days each month and the member must also work or receive paid leave for an additional five days in either the preceding or following month(s).

Also, the amendments provide that a member may not receive a year of service credit before Dec. 31, except in the year of retirement when a member may earn a full year of service credit by working the entire fall semester.

### **§25.135 - Service Credit Missing from Annual Statement**

Section 25.135 establishes the deadline for members to notify TRS that there is service credit missing from the member's annual statement and verifying that service credit to TRS. Generally, the deadline for verifying the service credit is the last day of the fifth school year following the end of the school year in which the service was rendered.

With the change to §25.28(g) that allows a member to establish unreported service and/or compensation in the current school year or the immediately preceding school year without paying actuarial cost, it is important for members to notify their employers and TRS immediately upon noticing the error on the annual statement so that the error can be corrected. In order to have time to meet the requirements of §25.28(g), the member must notify TRS by May 31 of the error so that it can be corrected by the end of the school year as required.

### **§27.4 - Refunds**

Section 27.4 establishes the requirement that a refund will not be made until the final deposit of contributions for the member is received from the last employer and posted to the member's account. Efficiencies anticipated as a result of the TEAM project prompted changes to this rule that allow TRS to issue refunds more promptly by allowing TRS to initiate a refund of the amount of accumulated contributions on hand before the final deposit from the employer is made, if termination of the member's employment is confirmed. If additional deposits are received after the initial refund, a second refund will be made. The employer must continue to confirm the termination of employment and advise TRS when the final deposit will be submitted.

### **§29.15 - Termination of Employment**

Section 29.15 addresses the requirement that employment must terminate in order to establish eligibility for retirement. The rule further establishes when a contract for future employment may result in a determination that employment has not terminated and when retirement is revoked by returning to work with a TRS-covered employer in the first month following retirement. Changes to this rule clarify that working as a substitute in the month following retirement is prohibited and revokes retirement.

### **§31.13 - Substitute Service**

Section 31.13 provides the requirements for working under the Substitute Service exception and clarifies that working as a substitute during the required one full calendar month break in service revokes retirement. Also, a retiree who is working as a substitute is not considered absent from service for the purpose of establishing the 12-month break in service required for full-time employment. The rule also clarifies that a retiree may combine work under the one-half time exception and under the substitute service exception in the same calendar month, provided the retiree does not work more than half of the workdays in that calendar month.

Many retirees and employers do not realize that the retiree may not work the one-half day that remains when working in a calendar month with an odd number of workdays. Amendments to this section clarify that the retiree may not work the one-half day or any amount of additional time when dividing an odd number of workdays in the month by two to determine how many days the retiree may work in the combined employment.

### **§31.14 - One-half Time Employment**

Section 31.14 provides clarification on how much a retiree may work under the one-half time exception without forfeiting the retiree's annuity for that month. The current rule provides that a retiree may work as much as the equivalent of four clock hours for every workday in the month. A workday is defined as every Monday through Friday in the month, without regard to whether the day is a holiday, the employer is open for business, or the retiree is scheduled to work each day.

Currently, the rule provides special instructions for retirees employed as instructors in institutions of higher education and directs that the retiree must count every hour in the lab or classroom as two hours of work to take into consideration the preparation time, the grading time, the time spent providing reviews, and similar duties. Changes to this rule clarify that with regard to employment as an instructor with an institution of higher education, the classes must be taken for college credit in order for the 2-to-1 conversion ratio to apply. Also, the changes clarify that online classes should be counted as two clock hours for every semester hour or college credit hour assigned to the class and adult education classes or continuing education classes are counted hour for hour.

Finally, changes to this section clarify that when combining employment as a substitute and other employment in the same calendar month that has an odd number of workdays, the retiree may not work any part of the remaining one-half day after dividing the total number of days by two to determine how many days are "one-half" the working days in the month.

### **§31.15 - Full-time Employment after 12-Consecutive-Month Break in Service**

Section 31.15 establishes the requirements for observing a break in service of 12 full, consecutive calendar months before returning to full-time employment for retirees who retired Jan. 1, 2011 or after. Changes to this section clarify that working as a substitute or under the one-half time exception is employment that interrupts the 12- month break in service and that paid leave is also considered employment that must be counted.

### **§31.32 - Half-time Employment Up to 90 Days**

Section 31.32 provides clarification on how much a disability retiree may work under the one-half time exception without forfeiting the annuity for that month. The current rule provides that a retiree may work as much as the equivalent of four clock hours for every workday in the month. A workday is defined as every Monday through Friday in the month, without regard to whether the day is a holiday, the employer is open for business, or the retiree is scheduled to work each day. However, disability retirees are also limited to working no more than 90 days in a school year.

The rule provides special instructions for retirees employed as instructors in institutions of higher education and directs that the retiree must count every hour in the lab or classroom as two hours of work to take into consideration the preparation time, the grading time, the time spent providing reviews, and similar duties. Changes to this rule to clarify that with regard to employment as an instructor with an institution of higher education, the classes must be taken for college credit in order for the 2-to-1 conversion ratio to apply. Also, the changes clarify that online classes should be counted as two clock hours for every semester hour or college credit hour assigned to the class and adult education classes or continuing education classes are counted hour for hour.

Finally, the changes to this section include the clarifying language added to the rules regarding employment after retirement for service retirees regarding combining employment as a substitute and other employment in the same calendar month. The amendments to this rule clarify if a calendar month has an odd number of workdays, the disability retiree may not work any part of the remaining one-half day after dividing the total number of days by two to determine how many days are "one-half" the working days in the month.

### **§47.10 - Determination of Whether an Order is a Qualified Domestic Relations Order**

Section 47.10 provides the detailed requirements in order for TRS to make payments of part of a distribution to a spouse or former spouse of the member. Last session, TRS received legislative authority to require that the order be in a form prescribed by TRS. Changes to this rule require that the model order developed by TRS must be used for all orders entered after Jan. 1, 2015. The model order is in a fillable form and is available on the TRS website.

## **§51.5 - Waiver of Deadline to Remit Deposits and Documentation**

Section 51.5 provides the process to be used by employers to obtain a waiver of the requirement for employers to submit contributions and documentation by the sixth day of the month following the month for which the report and contributions are due if the waiver is needed due to a technological or financial reason.

Changes were made to this rule to address the opportunity to correct errors in the current or immediately preceding school year regarding unreported service and/or compensation without the member having to pay the actuarial cost of the additional service or compensation credit.

## ***The TRS 7 form: frequently asked questions***

The *Notice of Final Deposit Before Retirement* form (TRS 7) is one of the forms included in the retirement packet sent to a member who requests retirement benefit information from TRS. The member is instructed to give this form to his or her TRS-covered employer along with the member's letter of resignation. This form is to be completed by an authorized official of the TRS-covered employer. TRS uses the information provided on this form to correctly determine a member's final annual salary and eligibility for retirement; therefore, it is imperative that reporting officials provide the information requested on this form to TRS in a timely and accurate manner.

### **FAQs**

#### **What does TRS do with this form?**

TRS uses the information provided on the TRS 7, in part, to determine if a member is eligible for the retirement date he or she has selected. One of the requirements to retire from TRS is that a member must terminate all employment with TRS-covered employers by the member's retirement date. TRS also uses the TRS 7 to determine the amount of creditable compensation in the member's final year of TRS-covered employment. This salary information is often needed to accurately calculate the member's annuity. For more information on correctly certifying the member's effective date of resignation/termination and salary in the final year of employment, please see below.

#### **How should a TRS-covered employer certify the member's effective date of resignation/ termination on the TRS 7?**

The effective date of resignation/termination is the date that the member terminates the employment relationship with the employer and all employment with the TRS-covered employer ceases. A member has not officially terminated employment with a TRS-covered employer if he or she is working or on paid or unpaid leave with the TRS-covered employer. For example, a member may turn in a letter of resignation to terminate his or her employment at the end of the day on July 31. This member may stop working on July 25 and remain on paid or unpaid leave through his or her date of resignation; however, the member's effective date of resignation/termination should be certified to TRS as July 31 on the TRS 7.

Another important note about termination of employment is that, for the purpose of determining eligibility for retirement, a member who has a contract or agreement for future employment with a TRS-covered employer has not terminated all employment with a TRS-covered employer. A member who has not terminated all employment with TRS-covered employers is not eligible to retire and is not eligible to receive any benefit related to retirement.

#### **What dates should a TRS-covered employer certify as the semester dates on the TRS 7?**

If you are a TRS-covered employer operating under a calendar with defined semesters, the semester dates certified on the TRS 7 should be the beginning and ending dates of the fall and spring semesters. TRS often uses this information to determine if a member has rendered enough service to earn a year of service credit in the final school year prior to retirement.

## **How should a TRS-covered employer certify the member's final annual salary and final report month on the TRS 7?**

The reverse side of the TRS 7 instructs reporting officials to include all creditable compensation earned between the beginning and ending dates of an employee's contract or work agreement during the final year of employment. TRS recognizes that many employers have not paid all of the compensation due to an employee by the employee's effective date of resignation/termination; however, reporting officials should include creditable compensation earned, but not yet paid, by the employee's effective date of resignation/termination in the final annual salary figure. The final deposit and month should reflect the amount of the final member contribution the TRS-covered employer will submit on behalf of the member and on which monthly report it will be included. This amount should **exclude** any TRS-ActiveCare contributions or other payroll deductions submitted on behalf of the member to TRS.

It is important to note that beginning with the 2013-14 school year, TRS determines a member's annual compensation for benefit calculation purposes on a Sept. 1 through Aug. 31 basis. If the retiring employee's contract or work agreement dates are different than Sept. 1 through Aug. 31, you may include the amount of creditable compensation paid to the employee between Sept. 1 and Aug. 31 in parenthesis next to the annual salary figure described above. Be sure to clearly label this salary figure as the Sep. 1 through Aug. 31 salary so there will be no confusion upon receipt of the TRS 7 by TRS.

## **What is non-creditable compensation that has been converted to salary, and how should a TRS-covered employer certify it on the TRS 7?**

Non-creditable compensation is any compensation expressly excluded as ineligible compensation in the statutes and rules applicable to the TRS pension plan or any compensation failing to meet the requirements of creditable compensation. TRS must exclude from benefit calculations any otherwise eligible compensation amounts that have been converted from non-creditable compensation to eligible salary and wages during any of the last three to five years of service prior to a member's retirement (depending on the number of years used in the member's final average salary computation at retirement). Conversion occurs when an employer agrees to pay a member with creditable compensation for services performed in the future that in the past were paid by that employer with non-creditable compensation. For example, if in the prior year contract a TRS-covered employer identified a portion of the member's compensation as a car allowance or cell phone allowance (non-creditable compensation) and then in the current year contract includes this compensation as base salary and drops the characterization of the amounts as a car or cell phone allowance, the previously ineligible compensation (the allowance amount) has been converted to creditable compensation (base salary). If the conversion occurred in the last three to five years prior to retirement the amounts converted to base salary will be excluded from the calculation of the member's final average salary. The amounts converted to eligible salary and wages would need to be certified on the TRS 7 if the conversion took place in any of the final three to five years prior to retirement.

## **Who should a reporting official contact if he or she realizes that erroneous information was submitted on the TRS 7?**

Reporting officials should contact their TRAQS coach if incorrect information has been submitted on a TRS 7. The TRAQS coach will relay the correct/updated information to the appropriate department at TRS. Reporting officials should be sure to provide their contact information to their TRAQS coach in case more information is needed by the TRS representative handling the member's file. TRS will contact the reporting official if a revised TRS 7 is necessary.

### ***TRAQS – Tip of the Month***

The member contribution rate will increase to 7.2 percent effective Sept. 1, 2015.