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**To:** House Committee on Pensions and Benefits

**From:** Julian Efird, Principal Analyst

**Re:** Working after KPERS Retirement

This memorandum addresses only the retirees of the Kansas Public Employees Retirement System (KPERS) and the policies adopted by the Legislature regarding the topic of working after retirement for a KPERS participating employer. The Legislature tends to alternate between a policy of restrictions and of no restrictions for retirees who go back to work for a KPERS participating employer after their retirement from state agencies, local units of government, or school districts and other educational institutions.

As recently as 1987, there were no statutory restrictions on working after retirement. Prior to that time, there had been a movement away from earlier restrictions that had been in statutes since the early 1960s. In recent years since 1993, the Legislature has made exceptions to the statutory restrictions, moving away from the restrictions adopted after 1987. In fact, the first restrictive 1988 language lasted only one year and was replaced by the Legislature in 1989 with the general policy currently in effect for KPERS retirees.

## Current Legislative Policy for KPERS

Current statutory provisions impose a salary cap of \$20,000 on KPERS retirees who return to work for the same KPERS participating employer from whom they retired. The salary cap legislation originally passed during the 1988 Session when a \$6,000 limitation was imposed on KPERS retirees. Subsequent amendments raised the dollar amount of the cap and changed the circumstances under which the cap is applied. When the statutory salary cap limitation is reached during a given calendar year, KPERS retirees either must stop working or must stop receiving their retirement benefits until the end of the calendar year. The cycle begins to be repeated with a new cap on calendar year income on each subsequent January 1.

A permanent exemption from the KPERS salary cap was authorized in 2008 for nurses who return to work for state institutions from which they retired, and a second three-year exemption from the cap, with a sunset of July 1, 2015, was authorized for school professionals. Substitute teachers and legislative staff have been exempt from the salary cap limitation on working after KPERS retirement since the early 1960s.

Another current legislative policy imposes a special assessment for KPERS participating employers who hire KPERS retirees. A current statutory provision requires participating employers who employ a retired KPERS member that did not retire from that participating

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employer to pay an actuarial-determined employer contribution plus the 4.0 percent employee contribution. The original provision passed during 2006. Beginning after the 2009 Session, school districts that rehire any licensed professional employee who retired from that same participating employer are required to pay the actuarial-determined employer rate plus 8.0 percent as the employee rate, with an expiration date of July 1, 2015, for this provision.

A final legislative policy requires KPERS retirees to be off any payroll at least 60 days before returning to work after retirement for any KPERS participating employer. The previous period of separation had been 30 days, but the longer period was instituted in 2009. The 30-day separation requirement originally had been added by the 1998 Legislature in response to a federal compliance review that recommended a specific separation time-period in order to determine that a person actually was retired. Prior to July 1, 1998, there had been no prohibition against retiring one day and going back to work immediately for a KPERS participating employer.

### **History of Working After Retirement**

The current restrictions on working after KPERS retirement, if returning to work for a KPERS participating employer, originated in 1988.

The 1988 Legislature originally provided for the reimbursement of individual retirement benefits to KPERS by participating employers for any KPERS retirees who were employed more than 30 days in a calendar year. The provision was prospective and applied only to KPERS members who retired on or after July 1, 1988. The statute exempted substitute teachers, as well as officers, employees, appointees or members of the Legislature. There had been no other statutory restrictions on KPERS retirees and post-retirement employment in effect at the time these provisions were adopted in the 1988 Session.

However, there had been previous statutory restrictions in the earlier years of KPERS after its establishment in the early 1960s that eventually were eliminated by the early 1980s. The 1988 change in law was in reaction to news reports of a high-ranking state official retiring one day and returning to work the next day for the same KPERS participating employer at full salary.

The 1989 Legislature repealed all provisions relating to post-retirement work restrictions for those who retired on or after July 1, 1988, if they went to work for a different KPERS participating employer. However, restrictions were continued for retirees who returned to work for the same KPERS participating employer for whom the retiree worked during the last two years of KPERS covered employment preceding retirement. If retirees returned to work for the same KPERS participating employer from whom they retired, those retirees would receive KPERS benefits until earnings reached \$6,000 in a calendar year, at which time they either would have to stop working or stop receiving KPERS benefits for the remainder of the calendar year. Another provision was authorized that allowed retirees to revoke their retirement and to become KPERS members again in order to continue working. Substitute teaching and services as a public official, including elected members, officers, employees and appointees of the Legislature, were excluded from the post-retirement salary cap provision.

In 1991, the Legislature increased the statutory cap on earnings permitted after KPERS retirement from \$6,000 to \$9,720 if retirees returned to work for the same participating employer

from whom they retired. The limitation did not apply to anyone who retired from KPERS before July 1, 1988, or to any retiree who went to work for a different KPERS participating employer.

In 1992, the Legislature raised the statutory cap on earnings limitation for working after KPERS retirement from \$9,720 to \$10,200.

The 1993 Legislature increased the working after retirement cap from \$10,200 to \$10,560 for retirees of KPERS.

The 1994 Legislature raised the cap on earnings permitted after retirement from \$10,560 to \$11,160 for retirees who were subjected to a limitation (KPERS and Tier I KP&F) if returning to work for the same participating employer from whom they retired. The Legislature, also during the 1994 Session, repealed the provision that allowed retirees to unretire if they returned to work after retirement from a participating employer. KPERS retirees who retired and returned to work with the same KPERS participating employer previously could unretire in order to avoid the cap on post-retirement earnings. Because the 1993 Legislature raised the KPERS multiplier from 1.4 percent to 1.75 percent for retirement benefit calculations, some retirees were unretiring with the intent to re-retire with the higher benefit multiplier applied to all their years of credited service.

The 1995 Legislature raised the working after retirement cap from \$11,160 to \$11,280, and clarified that the limitation would be applied to retirees of KPERS and Tier I KP&F.

The 1996 Legislature added Tier II members of KP&F to the working after retirement limitation of \$11,280 for those members who retired on or after July 1, 1996. The legislation corrected an oversight in previous legislation that omitted members of KP&F Tier II from the limitation of the salary cap.

In 1998, the Legislature added an employer reporting requirement to the working after retirement provisions for both KPERS and KP&F. The Legislature also increased the cap on earnings after retirement from \$11,280 to \$15,000 for both KPERS and KP&F retirees, and required prompt notification of KPERS by the participating employer when the retirees' earnings limitation was exceeded in a calendar year.

In 2000, the Legislature authorized phased retirements by members of the Legislature and other elected public officials who would be permitted to retire from another KPERS participating employer, if covered in another job, and would be able to continue serving in elected office covered by KPERS without having to resign that office in order to retire from the other KPERS participating employer. The legislation permitted elected public officials to be able to retire twice, once from their other KPERS participating employer and once from the elected office that is covered by KPERS. Any public elected official who retired from another KPERS participating employer and continued as an elected official with KPERS coverage would be subjected to the \$15,000 annual cap on earnings as an elected official. Elected public officials would have their retirement benefit recalculated after retiring from the public positions that were covered by KPERS. Previously, legislators were exempted from the salary cap limitation for working after KPERS retirement.

The 2005 Legislature also established a three-year exemption from the working after KPERS retirement salary cap for licensed nurses at state institutions. The legislation provided for the participating state agencies to pay KPERS the actuarial-calculated amount of employer

contributions for each nurse working after retirement. The provisions were scheduled to sunset on June 30, 2008.

In 2006, the Legislature increased the working after retirement cap from \$15,000 to \$20,000 for retirees who returned to work for the same participating employer from whom they retired. The increased cap of \$20,000 also applied to elected public officials who retired from KPERS-covered positions and continued to serve in an elected public office covered by KPERS.

In addition, the 2006 Legislature specifically addressed public school teachers and working after KPERS retirement by changing existing law. The legislation amended the statutory definition of a professional employee to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of professional service between a board of education and an exclusive representative of professional employees provided to the contrary. The legislation also changed the definition of "teacher" to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member.

Also in 2006, the Legislature imposed a special assessment on all KPERS participating employers who hired a retired KPERS member. A statutory provision required that participating employers who employed a retired KPERS member would be responsible for paying an actuarial-determined employer contribution plus the 4.0 percent employee contribution. The provision applied to state, school and local KPERS participating employers who hired a retired KPERS member beginning July 1, 2006. Any KPERS retiree previously employed before July 1, 2006, by a participating employer was exempted from the new law. The first actuarial-determined employer rates in FY 2007 were 5.84 percent for the state group, 9.75 for the school group, and 7.69 percent for the local group of participating employers.

In 2008, the Legislature removed a sunset that would have repealed an exemption for licensed nurses at state institutions who had been exempted from the working after KPERS retirement salary cap that was to expire after three years on June 30, 2008.

In addition, the 2008 Legislature also amended the statutory provisions related to working after KPERS retirement that applied to teachers. A change in the definition of "teacher" provided that a teacher means (1) a teacher defined by KSA 72-5436 and (2) any professional employee who retired from school retirement and previously was covered by KPERS.

In 2009, the Legislature extended the break in employment required after KPERS retirement from 30 days to 60 days before retirees can return to work for any KPERS participating employer. The Legislature clarified that any retirees who return to work for a KPERS participating employer, even if associated with a third-party contractor who provided services to a school district or other employer, would be covered by the working after KPERS retirement salary cap if working for the same participating employer from whom they retired.

Also, the 2009 Legislature established a three-year exemption from the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation provided for the participating employers to pay KPERS the actuarial-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement. The provisions originally were scheduled to sunset on July 1, 2012.

The 2012 Legislature extended the sunset date to July 1, 2015, for the exemption from the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation continued the provision for the participating employers to pay KPERS the actuarial-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement.

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