



## A retire-rehire refresher

June 11, 2018

While retire-rehire has become "old hat" in some districts, it remains controversial in others. Before you wade in, make sure you have the basics right.

Hard to believe, but the "retire-rehire" process with which we are all now familiar has been around for almost 15 years. First enacted in 2003, this process – which requires advance notice to the public and an opportunity for the public to speak out against the rehire – was clearly a response to loudly-voiced public concerns about "double-dipping." Although the underlying controversy seems to have dimmed over the years, it has never really gone away. For this reason, and because the process itself is a bit tricky, it is always good to review the legal requirements before proceeding with a retire-rehire.

### **Step one: The public notice**

The first thing to bear in mind about retire-rehire is that it is always throwing a 60-day monkey wrench into your hiring plans. That is because the retire-rehire laws for STRS and SERS (which are virtually identical) both state very clearly that the public must be given at least 60 days' advance notice before you rehire any retiree in the same position. (See Ohio Revised Code Sections 3307.353 and 3309.345.) These statutes do not specify how you are supposed to notify the public of your intention to do a retire-rehire. Is posting on your district's website enough? Maybe, but it's not worth a lawsuit. A much safer course, is to provide at least one notice in a newspaper of general circulation in the district, indicating who the board intends to rehire in the same position post-retirement, and setting forth the date, time and place of the board meeting at which the board will be conducting a "public meeting on the issue of the person being employed."

### **Step two: The public forum**

The second step of the retire-rehire process is to conduct a “public meeting” at which members of the public are given the opportunity to be heard on the “issue” of the person’s re-employment. Again, the laws do not provide any detail as to what form this discussion should take or how long it must last. Presumably, the legislature intended it to be a kind of “public forum” on the question, not unlike the typical “public participation” segment which most school boards allow at some or all meetings. As such, it is also reasonable to assume that some kind of time limits may be placed on this process (perhaps using the board’s existing public participation policy as a model). The *timing* of the board meeting at which this occurs is critical, it must be *between 15 and 30 days prior* to the date on which the rehire occurs.

### **Step three: The rehire action**

The third and final step in the retire-rehire process is the actual board action to re-employ the individual in question. Again, the timing here is critical, the board meeting date for action must be at least 60 days after the public notice and *between 15 and 30 days after* the meeting at which the “public forum” was held. At this meeting, the board is taking straightforward action to employ the named person for the position in question. The law does not create any special terms or conditions for this re-employment. However, through local collective bargaining agreements or other special contractual terms, it may be possible to restrict certain rights and benefits that the individual might otherwise enjoy in the position.

### **That was the easy part**

The steps set out above are merely the “nuts and bolts” of the retire-rehire process. Aside from the obvious issue of dealing with public negativity (which may or may not occur in your community), many other questions of interpretation surround Ohio’s retire-rehire laws and their application (health insurance, age discrimination, what does “same position” mean, just to name a few). The good news is that after 15 years of school boards using these procedures, there appears to have been no significant adverse actions of the retirement systems or the courts with respect to the way districts have been implementing these rehires, generally. One clear rule that both STRS and SERS *have* adopted: once you have gone through the retire-rehire “hoops” for one individual, you need not repeat the process for the continuing year-to-year employment of that person. (See Ohio Administrative Code Sections 3307:1-13-03 and 3309-1-61.) As always, it is advisable to consult your district’s legal counsel when other specific questions about the retire-rehire process arise.

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