

**MUNICIPAL EMPLOYEES' RETIREMENT
SYSTEM OF MICHIGAN
PLAN DOCUMENT**

ARTICLE III. RETIREMENT REQUIREMENTS AND BENEFIT PROGRAM.

Sec. 31. Employment by Participating Municipality or Court; Special Conditions.

The following special conditions shall apply if a retiree becomes employed (**full-time or part-time, by contract, or otherwise**) by a participating municipality or court.

- (1) Retiree employed by the same participating municipality or court from which reduced or unreduced normal age and service retirement occurred. Beginning with the month of January 2011, the employer shall include in their monthly wage and service report to the retirement system the salary and hours of service for all reemployed retirees without regard to the date reemployment commenced.
 - (a) **Voter-Elected Official or Appointed Official (defined as a person appointed to an elective office) (effective May 12, 2010).** A retiree who retired as an elected or appointed official (or who had served in such official capacity within one (1) year prior to his or her retirement allowance effective date), or a person who had not retired at the time of his or her election to, or appointment to a vacant position in elective office, who is:
 - (i) elected, re-elected, appointed, or re-appointed to the same office (whether in a new term of office or not); or
 - (ii) employed in any other capacity (elective, appointive, or otherwise)

shall have his or her benefit suspended during service in such office or other employment unless at least two (2) years have elapsed since the retirement allowance effective date.

The individual shall not be a member of the retirement system for any purpose. Upon termination of service in such office or other employment, the pension benefit shall cease to be suspended and shall resume the first day of the month following such termination of service or employment without change in amount, and no payment for any amount of the suspended benefit shall accrue or otherwise be made by the retirement system. *This subsection (a) shall take effect May 12, 2010, and shall apply to any retiree whose post-retirement service or employment had commenced on or after that date until the expiration of the present term or occupancy of the office held after retirement (where applicable), provided that such service or employment was commenced in compliance with former subsection (1) of section 31 (see former text in Note 3 below).*

- (b) **All employees not addressed in subsection (1)(a), including retirees subsequently reemployed as a result of becoming an elected or appointed official (effective January 1, 2011).** A retiree who is reemployed or who provides contractual services shall be referred to as a 'reemployed' retiree.

- (i) The reemployed retiree shall meet the following conditions:
 - (A) Thirty (30) calendar days (or more) shall have elapsed since the date the reemployed retiree terminated employment and retired.
 - (B) The reemployed retiree shall file a “Return to Work Certification” form with the retirement system prior to the date of reemployment acknowledging that the reemployment is not the result of a pre-retirement agreement or understanding with the employer from whom they retired.
 - (C) The reemployed retiree shall not work in excess of 720 hours in a calendar year.
 - (D) If the reemployed retiree does not comply with any of the preceding conditions (A), (B) or (C), the pension shall be suspended during any further period (or periods) of reemployment.
 - (E) During the period of reemployment, a reemployed retiree who works 720 hours or less in a calendar year shall not otherwise be an active member of the retirement system for any purpose.
 - (F) Where the reemployed retiree works more than 720 hours in a calendar year, the retiree shall be treated as a full member of the system and accrue additional service benefits. Upon the “final” retirement, the reemployed retiree’s retirement allowance shall be recalculated and the reemployed retiree shall receive the recalculated allowance. This recalculation provision shall apply only one time to any reemployed retiree.
- (ii) Upon reemployment of a retiree who retired from their employ, the employer shall file with MERS the Employer Certification stating that no pre-agreement for employment took place before the individual retired.
- (iii) A reemployed retiree shall not have his or her pension suspended if either (A) or (B) is met:
 - (A) The retiree was elected, re-elected, appointed, or reappointed to office prior to January 1, 2011. This exception shall expire not later than the date the office is vacated or the term of office or appointment in effect prior to January 1, 2011 ends.
 - (B) The retiree was reemployed and had worked as a reemployed employee prior to January 1, 2011, had filed his or her retirement application with the retirement system not later than November 30, 2010, with a retirement allowance effective date not later than December 1, 2010.

A reemployed retiree who satisfies (A) or (B) shall not be subject to subparagraph (b)(i)(B)-(F) or (b)(ii).

- (2) Retiree employed by different participating municipality or court than the one from which the person retired. Payment of the retiree’s retirement benefit shall continue, without change in amount or conditions by reason of the employment. The retiree shall

be considered, for the purposes of membership and potential benefit entitlement, in the same manner as an individual with no previous record of employment by any participating municipality or court, except as otherwise provided in section 5(1) or where the municipality has adopted the Reciprocal Retirement Act, 1961 PA 88.

- (3) The provisions of this section constitute Board action in its exclusive capacity of fiduciary and trustee for the retirement system, the participating municipalities and courts, and all MERS trust assets, as provided in MCLA 38.1536(2)(a) and 38.1539(1); Plan sections 36(2)(a) and 39(1). In the event any alteration of this section 31 is made or occurs, under section 43B of the Plan Document concerning collective bargaining or under any other plan provision or law, MERS shall not recognize such action, other than in accordance with this section.

History: 1992 PA 63, Eff. May 22, 1992, and Plan Document of 1996.

Note 1: Former subsection (1) amended by Board action of August 9, 2001, effective January 1, 2002. The prior earnings limit (effective January 1, 1998) was \$10,000 until age 70. The 2001 amendment increased the earnings limit to \$15,000, and decreased the age limit to age 65.

Note 2: On May 12, 2004, the Board repealed (with immediate effect) the former annual earnings limitation language in former subsection (1). The repealed language stated that where a retiree was employed by the same participating municipality or court the person retired from, the MERS pension was suspended when annual earnings reached \$15,000 (or age 65 attained). Subsection (1) as amended reaffirms the prohibition against MERS membership.

Important Comment: As a continuing condition of MERS tax-qualified “governmental plan” status under Section 401(a) of the Internal Revenue Code, MERS Plan Document Section 55(1) provides: “The Retirement Board intends that the retirement system be a qualified pension plan under section 401 of the Internal Revenue Code and that the trust be an exempt organization under section 501 of the Internal Revenue Code. The Retirement Board shall administer the retirement system to fulfill this intent.” A retiree [retirant] is a person who has had a “bona fide termination of employment in which the employer/employee relationship is *completely severed*” (IRS Information Letter 2000-0245 (September 6, 2000); Revenue Ruling 74-254, 1974-1 CB 91); and where the person is currently receiving an accrued pension benefit payment immediately. Accordingly, to clearly show “complete severance,” the employer should establish a minimum period following termination of employment of not less than 30 days any formal actions necessary for new employment occur. Where there has been a bona fide severance of employment for at least 30 days, payment of a pension benefit during new employment is consistent with Plan Section 55(1). Where there is no bona fide termination of employment of at least 30 days (60 days effective July 15, 2010) before rehiring, payment of a pension benefit would not be consistent with Section 55(1), could imperil MERS qualified plan status, and the reemployed individual’s receipt of benefits while reemployed is subject to suspension by MERS. See also Michigan Attorney General Opinion #7167 (December 29, 2004). Source: MERS Legal Department February 2, 2005.

Note 3: By Board action of May 12, 2010:

- Text in former subsection (1) repealed; introduction sentence amended (new language in bold text); new subsection (1)(a) added, and (1)(b) reserved, with all these actions having immediate effect; and,
- subsection (2) text internally rearranged.

The text of former subsection (1) of section 31 prior to amendment stated: “*If a retiree becomes employed by the participating municipality or participating court from which the person retired, the retiree shall not be a member during the period of employment.*” With respect to all employees other than elected or appointed officials, former section 31(1) shall be considered to remain in effect (as though repeal had not occurred) until such time as the Board adopts the language for subsection (1)(b).

Note 4: By Board action of July 14, 2010, to take effect as follows:

1. Subsection (1)(b) text added, effective January 1, 2011.
2. The following sections have immediate effect:

- subsection (2), concluding clause added to reflect MERS administrative practice;
- subsection (3) added; and
- “retiree” substituted for “retirant” throughout.

Note 5: By Board action of September 15, 2010, with immediate effect [added language underlined]: The former first sentence in subparagraph (1)(b)(ii) was relocated to subsection (1) as the new second sentence; and subparagraph (1)(b)(iii) revised to establish January 1, 2011 as the date on which the provisions of subsection (1)(b) shall apply to all reemployed retirees.

Note 6: By Board action of November 10, 2010, with immediate effect (added language underlined), September 15, 2010 amendments reconsidered, and upon reconsideration:

1. Language in subsection (1)(a) added (no change in first two sentences of subsection (1)).
2. Within subsection (1)(b), text added:
 - at beginning of (b); and
 - (b)(iii) former text struck, and new text inserted.