For Nebraska State & County Employees

RETIREMENT NEWS

NEBRASKA PUBLIC EMPLOYEES RETIREMENT SYSTEMS | OCTOBER 2021

IN THIS ISSUE

Wrestling With Reemployment

At NPERS, one of our main concerns is ensuring the plans we administer are in compliance with the federal tax code. Failure to comply can result in mandatory repayment of benefits, fines, and penalties assessed to the plan, employers, and plan members. Even worse, non-compliance could jeopardize the plan's tax-qualified status for all our members.

An ongoing compliance issue is reemployment after termination/retirement. Reemployment is defined as providing ANY service for ANY employer participating in your plan after terminating employment. For county members, this includes returning to employment at any Nebraska county, with the exception of Douglas and Lancaster. For state members, this includes returning to employment at any state agency.

The primary compliance issue involves members who are reemployed after taking a distribution from their retirement account. The federal tax code and state statutes require state and county plan members to terminate employment prior to taking that distribution from their retirement account. State statutes require a "bona fide separation from service" and establish break in service time frames of 120 days for both plans.

A member shall not be deemed to have terminated employment if they subsequently provide service (temporary, part-time or full-time, paid or voluntary) for any employer participating in the plan within this 120-day time frame.

It has come to the attention of NPERS that at or prior to retirement, some employers and employees are pre-arranging (written or verbal) returns to service after the 120-day break in service time frame. If the member takes a distribution from their retirement account, these arrangements may be a violation of both State and Federal laws and could put the plan in jeopardy, subjecting the member to mandatory repayment provisions. The IRS has advised plan sponsors to prohibit these arrangements or risk penalties and potential loss of tax-qualified status.

State or County plan members who take a retirement distribution and subsequently provide service at their prior employer give the impression that there may have been a pre-arranged agreement to return to work. If it appears there was a pre-arranged return to work, NPERS will conduct an inquiry to research the facts and circumstances surrounding the member's return to work.

As part of the inquiry, NPERS will contact the employer and ask for documentation to demonstrate the process taken to replace the retired/terminated employee. In addition, both the member and employer will be asked to certify in writing if there was a pre-arranged return to work agreement or not. After the inquiry has been completed, NPERS and the Public Employees Retirement Board will determine if there was a bona fide separation from service, or if a pre-arranged return to work.

Your employer cannot "hold" a position open for you after you begin retirement benefits – regardless of the time frame.

If **at any time** it is determined a State or County plan member did not experience a bona fide separation from service, or there was a pre-arranged agreement to return to work, three steps shall be taken:

1. No further benefits will be issued.
2. Any "missed" contributions must be made up by the member and employer.
3. All benefits previously issued – including any taxes withheld – *must be repaid by the member.*

These repayments could be sizable amounts, especially if the non-compliance is discovered after the member has received several months or years of benefits. Failure to repay can result in garnishment of wages, checking and savings accounts, and other retirement assets.

Reemployment after retirement is a complex topic and one that can lead to unwelcome consequences for non-compliance. Members are encouraged to refer the their plan handbook for additional information on reemployment requirements. Members and employers are welcome to contact our office if they have additional questions or concerns.

Watch Out!

Imagine you're in a crowd. You see someone reach their hand into the purse of the person standing in front of you, slyly bringing out the wallet and putting it into their coat. What would you do? Would you say something, raise a fuss? Would you grab the thief? Or would you watch silently, thanking your lucky stars that it's not happening to you? This scenario is not unlike what is happening to many victims of elder fraud on a daily basis. **(cont'd. on page 2)**

Watch Out! (cont'd.)

Because of their financial stability, seniors have become easy targets for this kind of financial crime. According to the Department of Justice's Office for Victims of Crime (OVC) in their "2018 DOJ Report on Elder Abuse and Financial Exploitation," each year an estimated **$3 billion** is stolen from America's seniors through a variety of mass mailing, romance, and vendor or contractor scams.

Thieves perpetrate on-line scams using pop-ups asking for personal information. Another common scam involves sending malicious e-mails containing suspicious links meant to gather financial data. It's also not uncommon for them to call pretending to represent the IRS, Medicare, Medicaid, Social Security, or other organizations that are trusted and relied upon by seniors. Sadly, many of these victims will never fully recover from being taken in and stripped of their savings by these predatory scammers. They simply do not have the time, opportunity, or resources.

Nebraska Public Employees Retirement Systems is committed to our members. We will always verify information with you when speaking to you over the phone. We want you to feel secure and comfortable at all times. Should you ever think that it's a scammer calling, **end the call** and call us back directly at **402-471-2053 or 800-245-5712.** We don't want you to fall prey to a scam caller masquerading as us. Verify that the person you are speaking with is who they say they are.

Our recordkeeper, Ameritas, also endeavors to make your online experience more secure. With the protection of the Ameritas Account Armor Guarantee, Ameritas will restore the value of your account if any of your assets are stolen due to fraud or unauthorized activity, provided you follow a few simple steps:

Register for online account access and electronic delivery

Register for online account access on ameritas.com by completing the process described in your welcome letter or by calling 1-800-277-9739. Registration requires multi-factor authentication with your email or phone number.

Sign up for electronic delivery on ameritas.com, so that you will receive all transaction confirmations, statements, disclosures and notices quickly via email. Simply sign in to your account and edit your profile to provide an email address.

Monitor your account frequently

- Log into your account often to check your balance and ensure that your contact information is current.

  – If you are an active employee, please contact your company promptly for any address changes.

  – If you no longer work for the company sponsoring your retirement plan, please update your information quickly and easily online.

  – For your protection, there is a seven (7) day hold on accounts whenever information is changed.

- Be on alert for any suspicious messages such as texts, phone calls or emails. If you receive anything suspicious asking for information related to your Ameritas accounts, please contact us immediately. Ameritas does not ask for personal or login information through email, texts, or phone calls.
- Open any mail from us immediately and contact us if there is any unusual activity noted.

Protect your information

- Use current anti-virus software.
- Be careful when opening attachments or clicking on links.
- Change passwords often and do not reuse passwords.
- Do not share any login information with anyone.
- Lock your devices when not in use. Do not use the "remember this device" option.
- Use only wireless networks that you trust. Be careful when using public "free" networks.
- Be aware of current potential scams.

Should you or someone you know be a victim of elder financial fraud, **don't wait, report it immediately**! Elder financial exploitation occurs to one in ten seniors according to the OVC. Many victims of elder fraud do not report it. They may feel embarrassed, or they may not want their relatives to question their cognitive abilities. Whatever the reason, by reporting it you have a chance to recover your losses and an opportunity to prevent this from happening to others. To learn more about the OVC National Elder Fraud Hotline, visit https://ovc.ojp.gov/program/stop-elder-fraud/about-hotline. The right thing to do is to speak up!

NATIONAL ELDER FRAUD HOTLINE
1-833-FRAUD-11
1-833-372-8311

Don't Play the Social Security Guessing Game

by Jeremiah Calcara

A recent Social Security Administration (SSA) report shows that half of all retirees are counting on Social Security (SS) for at least 50% of their retirement income. Furthermore, studies show that 21% of married couples and 45% of single individuals receive 90% of their retirement income from their SS benefit.

(cont'd. on page 3)

Don't Play the Social Security Guessing Game (cont'd.)

When you consider that SS is designed only to replace 35%-40% of your income, you can see why these numbers are a problem.

There are many reasons that we can point to for this issue (inadequate retirement savings, not participating in company retirement plans, etc.), but a recent study by the USC Center for Economic and Social Research points us to a new one: workers overestimate how much they're going to receive from SS. According to researchers, the more optimistic workers are about their SS benefit, the less likely they are to save enough for what they'll need in the future.

The good news is that there is an easy fix to this problem. In the same way that NPERS provides a benefit estimator for your retirement plan, the SSA also has a benefit estimator for you to see a snapshot of what your SS benefit might be. Visit SSA.gov and review what your benefit at this point in your career looks like. For more information about the SS program, watch our Social Security Video on the Publications/Video page at NPERS.NE.GOV

RMD Reminder

If you are nearing the age of 70, you will need to pay attention to the RMD age as this may force you to take a distribution if you have ceased employment and deferred your account. For more information regarding RMDs check out your plan page (State or County) on NPERS.NE.GOV

Required Minimum Distribution Packet (pdf)

This packet provides information and warnings regarding Required Minimum Distributions (RMDs).

DCP and Workday!

NPERS is thrilled that our State members can now enroll in and make changes to their Deferred Compensation Plan using the **Workday** system! However, it is important to remind enrollees in DCP that after you have signed up to participate, you need to make sure you have submitted a Beneficiary Designation Form to add beneficiaries to your account and that you will need to establish an Ameritas Online Account to make fund allocations and transfers for your funds. Once you do these two simple things, you'll be set up for your DCP to be a helpful component to achieving your retirement savings goals.

Litigation Involving Actuarial Equivalence

by Orron Hill

Background. Over the last year-and-a-half, eleven class action lawsuits were filed claiming ERISA fiduciary duty violations for failure to pay actuarially equivalent benefits. So far, all the lawsuits involved ***corporate***, rather than ***governmental (like our)***, pension plans.

Only two courts granted motions to dismiss.[1] However, both dismissals focused on procedural, rather than substantive, issues. Further, in one of the two cases, the plaintiffs were given permission to correct the procedural errors by repleading the case.

Two of the cases settled.

- In the *Smith v. U.S. Bancorp* case, the parties publicly announced they have settled in principle but have not disclose specifics of the settlement.
- In the *Cruz v. Raytheon* Company case, the plaintiffs challenged Raytheon's use of the 1971 mortality tables to calculate optional forms of benefits. Shortly after the district court denied Raytheon's motion to dismiss, Raytheon agreed to pay $59.2 million to more than 10,000 participants and beneficiaries to settle the case.

Why it matters. Nebraska law, like ERISA, requires the monetary value of the optional benefit forms to be actuarially equivalent to the value of the normal form of a benefit.[2] Thus, it is important for us, as fiduciaries of our plan members' assets, to be mindful of these cases and to ensure we do not make the same mistakes.

A Lawyer's (Not an Actuary's) Synopsis of Actuarial Equivalence. Optional benefit forms must be actuarially equivalent to the normal benefit form and each other.

Optional benefit forms are actuarially equivalent when the present monetary value of the monthly payments expected to be paid to a retiree under the optional benefit form(s) and the present monetary value of the monthly payments expected to be paid to a retiree under the normal benefit form.

Actuarial equivalency is demonstrated by performing calculations showing the equality amongst the benefit options. The calculations are based on multiple assumptions. Two of the most important are:

1. An interest rate that discounts the value of future payments (sometimes referred to as the "discount rate"), and
2. A mortality table that estimates the amount of time future benefit payments will be made based on the individual's life expectancy at a given age. The individual's life expectancy is estimated based upon many demographic factors, including, but not limited to, age, gender, occupation, location of residence, income levels, etc.

Nebraska Law on Actuarial Equivalency in the PERB-managed Plans.

As previously stated, Nebraska law requires optional benefit forms to be actuarial equivalent to the normal benefit form.[3] Whether a plan complies with these laws depends on whether the actuarial assumptions used to calculate the optional forms of benefits are reasonable.

When considering whether actuarial assumptions are reasonable, courts look to whether the assumptions have been updated to reflect current trends in mortality and interest rates.[4]

(cont'd. on page 4)

Litigation Involving Actuarial Equivalence (cont'd.)

Current Status of Actuarial Assumptions in PERB-managed Plans.

Laws 2017, LB 415, (LB 415) updated the definition of "actuarial equivalent" in the PERB-managed Plans. The change in definition allows the PERB's contracted actuary to recommend updates to the mortality assumptions and actuarial factors used for converting the member's account following an actuarial experience study, a benefit adequacy study, or a plan valuation for certain plan members.

Since LB 415's passage, the PERB reviewed and updated the actuarial assumptions, including, but not limited to, the actuarial assumed rate of return, mortality assumptions, demographic a sumptions, and actuarial factors, to ensure retirees receive the correct retirement benefit. For instance, the PERB considered information about possible changes to the actuarial assumptions and factors at its five monthly meetings held in September 2020 through January 2021. After much thoughtful deliberation and discussion, the PERB voted to adopt new actuarial assumptions and factors for the School, Judges, and Patrol Plans' traditional defined benefits, and the State and County Plans' cash balance benefit plans (also called "hybrid defined benefit plans"). In doing so, the PERB took the necessary and appropriate action to ensure retirees are receiving the correct, actuarial equivalent benefits to which they are entitled.

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[1] **Motion to Dismiss Granted:** DuBuske v. PepsiCo, Inc. (S.D.N.Y.) and Brown v. UPS (N.D. Ga.).
Motion to Dismiss Denied: Torres v. American Airlines, Inc. (N.D. Tex); Smith v. U.S. Bancorp (D. Minn.); Cruz v. Raytheon Company (D. Mass.); Belknap v. Partners Healthcare System, Inc., (D. Mass.); Duffy v. Anheuser Bush (E.D. Mo.); Berube v. Rockwell Automation, Inc. (E.D. Wis.); Herndon v. Huntington Ingalls Industries, Inc., et al., (E.D. Va.); Masten v. Met Life (S.D.N.Y.); and Scott v. AT&T Inc. (N.D. Cal.).

[2] County Plan see Neb. Rev. Stat. § 23-2317; Judges Plan see Neb. Rev. Stat. §§ 24-701(16), 24-707.01, and 24-710; School Plan see Neb. Rev. Stat. §§ 79-934 and 79-938; Patrol Plan see Neb. Rev. Stat. § 81-2026 (for normal form - no optional forms offered); and State Plan see Neb. Rev. Stat. §§ 84-1319

[3] See endnote 2.

[4] See, for example, endnote 1.

NPERS
Nebraska Public Employees Retirement Systems
P.O. Box 94816
Lincoln, NE 68509
85-28-51

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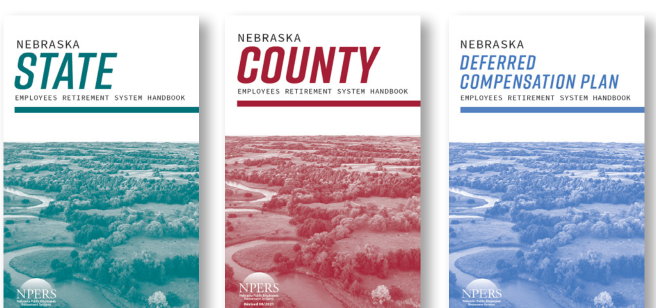
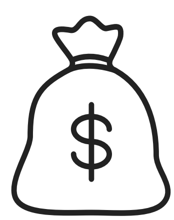
New Member Handbooks

The member handbooks for the Nebraska State & County retirement plans, and the voluntary Deferred Compensation Plan for State employees, have been revised. You may access the current versions on the "Publications" page on the NPERS' website.



Cash Balance Rate



For the quarter beginning October 1st, 2021, the rate of return for Cash Balance participants is 5%.

The current and historical Cash Balance rates of return are available via the "Cash Balance Rates of Return & Dividends" link on our website.