



The procedural requirements for rehiring retirees

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This fact sheet is designed to address the most frequently asked questions about rehiring retirees. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

Rehiring retirees is an option that many school districts consider. In some districts, these decisions are controversial, in others they are not. Whether it is wise to rehire a retiree is a decision best left to each individual board of education based on the facts and circumstances involved. Boards of education that choose to rehire employees who have retired from the school district must take several steps prior to reemployment ([Ohio Revised Code \(RC\) Sections 3307.353](#) and [3309.345](#) and [Ohio Administrative Code \(OAC\) Sections 3307:1-13-03](#) and [3309-1-61](#)).

What does the law say?

For a board to reemploy a retiree from the same school district, the board must give public notice 60 days before the reemployment begins that the person is or will be retired and is seeking reemployment with the district. If the board has an urgent reason to fill the position in an expedited manner and the reason is explained in the notice, the public notice must be given 30 days before the reemployment begins. This notice must include the time, date and location of the public meeting that will be held on the issue.

After the notice is issued, the board must hold a public meeting on the issue of employing the person between 15 and 30 days before the reemployment begins. The timing for the meeting does not change even if the position is being filled in an expedited manner.

Who is affected?

The law affects all employees whose positions are “customarily filled by a vote of members of a board or commission.” This includes boards of education. The law applies to employees who retire and seek to be rehired by the same school district, either as State Teachers Retirement System (STRS) ([RC 3307.353](#)) or State Employees Retirement System (SERS) ([RC 3309.345](#)) retirees. STRS retirees also are referred to as “superannuates” ([RC 3307.01\(M\)](#)).

The language, which is practically identical in [RC 3307.353](#) and [3309.345](#), states, “A board or commission that proposes to continue the employment as a re-employed retirant [superannuate] or rehire as a re-employed retirant [superannuate] to the same position.”

This phrasing lacks clarity regarding the applicability to various situations. However, it appears that the law applies only to persons who retire from and seek to be rehired to the same position. Thus, an individual who retires as a principal and seeks reemployment in the same district as a teacher probably would not be subject to the notice and meeting requirements.

Is anyone excluded from the notice and meeting requirements?

Yes. If a person has been retired from the district for one year or more before reemployment is to begin, neither the notice nor the public meeting is required ([RC 3307.353\(C\)](#) and [3309.345\(C\)](#)).

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For more information on this subject, please contact OSBA’s Division of Legal Services

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How do boards of education comply with the rule?

Districts must comply with the notice and meeting provisions. It appears that the requirement of the 60- or 30-day notice prior to a board's action to reemploy could be accomplished using the same method the board uses to notify the public of its meetings; in other words, by publication in a newspaper of general circulation or by a "reasonable method whereby any person may determine the time, place and purpose of all special meetings." Nothing in the statutes suggests that the board may not hold the public meeting about the retire-rehire at a regularly scheduled, as opposed to a special, meeting of the board. However, the notice must clearly indicate "that the person is or will be retired and is seeking employment with the employer." Therefore, it appears that the notice of the time and place of the public meeting must include the purpose as indicated.

The first step to determine when the notice must be issued is to set the date the board will rehire the individual (the date of the board action to reemploy, not the date the person starts back to work). The second step is to count back either 60 or 30 days from that date. That is the deadline to publish the public notice. The third step is to count back 30 and 15 days from the date the board will act to rehire. That two-week period is the time period in which the board must have the public meeting on the issue of the person being reemployed. It may be possible to have this meeting at the board's regularly scheduled meeting. If not, the board will need to call a special meeting. Once the date of the public meeting is selected, it must be included in the public notice sent out either 60 or 30 days prior to the meeting in which the board will act to rehire.

Example 1: The board wants to rehire Dr. Good with a start date of Aug. 1. The board will act to rehire at its regular meeting on July 15. By counting back, identify that:

- 60 days prior to the July 15 meeting is May 16;
- 30 days prior to the July 15 meeting is June 15;
- 15 days prior the July 15 meeting is June 30.

The board must publish the public notice on or before May 16. The public notice will include the date of the public meeting, which must be held between June 15 and June 30. The board's regularly scheduled June meeting is June 20, so the board will hold the retire-rehire meeting at that board meeting.

Example 2: Dr. Good retired two years ago on Dec. 31. The board wants to rehire Good starting on Aug. 1 to fill a position that has unexpectedly opened. Because of the urgency of the situation, the board needs to move quickly. The board will act to rehire Good at its regular meeting on July 15. Because of the expedited hiring situation, it will use the 30-day notice procedure. Counting back, identify the key dates as:

- 30 days prior to the July 15 meeting is June 15;
- 15 days prior to the July 15 meeting is June 30.

The board's public notice must be issued no later than June 15, and the notice must include the date of the public meeting at which Good's employment will be discussed. That meeting must occur between June 15 and June 30. The board can have that meeting, for example, at its regularly scheduled board meeting on June 20.

The most confusing thing about the retire-rehire law is determining which date to use to start counting. The above description uses the date the board acts to employ an individual. Some persons might interpret the law as using the date the reemployed retiree is to begin work, rather than the date of board action. It seems more consistent with the purpose of the statute to use the former date. For example, suppose that a board wishes to reemploy a retired principal in the same position and acts on that reemployment in June for work beginning the next school year in August. It would seem that the statute contemplates that the time for notice and meeting before the public on the issue of reemployment would occur prior to the board acting to reemploy the retired principal. Public comment and notice after the board action to employ, regardless of the date work is to begin, would be irrelevant if the board has already acted to employ the retiree. For this reason, OSBA believes boards should use the date of board action to rehire, not the date the employee will begin work.

What must the public meeting include?

The law requires that the board "hold a public meeting on the issue of the person being employed by the employer" ([RC 3307.353](#) and [3309.345](#), respectively). In terms of the content required at the meeting, nothing in the statutes requires public participation at this or any other meeting of the board. However, the intent of the statute appears to contemplate the possibility of providing public participation. The language requires the board to "hold a public meeting on the issue of the person being employed by the employer" ([RC 3307.353\(B\)\(2\)](#), [RC 3309.345\(B\)\(2\)](#)). If the board of education typically provides public participation at its regular meetings, it should consider following that already-established practice.

Do boards of education have to comply each time they renew a contract?

No. STRS and SERS rules clarify that a reemployed retiree for whom the district has complied with the reemployment requirements and certified the same to the retirement system does not have to do so every year, where the employment continues in the same position from year to year. Therefore, a board may continue to renew limited contracts for rehired-retired employees from year to year without notice and meeting once the board has certified it complied initially upon reemployment.

How is the rule enforced?

There are no enforcement provisions in the law. [RC 3307.35](#) and STRS and SERS rules require that boards notify them of the reemployment and certify that the district has complied with the rules.

Can we require a retiree to obtain health care coverage from STRS?

[OAC 3307:1-11-02](#) declares retirees ineligible for primary health coverage by STRS if the retiree is “employed and has access to a medical plan with prescription coverage available through the employer or if employees of that employer in comparable positions have access to a medical plan available through the employer provided the medical plan with prescription coverage available through the employer is equivalent to the medical plan with prescription coverage at the cost available to full-time employees as defined by the employer.”

What are the collective bargaining implications?

There may be collective bargaining agreements that have provisions specifically addressing the procedures for rehiring retired employees. Collective bargaining contract provisions, if written correctly, can supersede applicable provisions of the law. If the district currently has a negotiated provision that addresses how retired employees will be rehired into the district, theoretically, the board should follow that procedure. However, if the procedure as written in the contract does not specifically state that it supersedes or replaces applicable law on point, then districts should err on the side of caution and follow the procedures outlined in the statutes.

Conclusion

Please contact your board counsel for specific questions or the OSBA Division of Legal Services for additional information.

The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.

¹ While interpretation of this requirement differs among some school law practitioners, OSBA has taken the position that when considering the apparent intent of the statute (that the public have opportunity to comment on the retire-rehire decision), combined with the overall statutory scheme requiring Ohio’s Sunshine Laws be liberally construed in favor of transparency, using the date of the board action to reemploy to determine the deadline for publishing notice is appropriate.