

Sec. 145.38. (A) As used in this section:

(1) "PERS retiree" means a former member of the public employees retirement system who is receiving either of the following:

(a) Age and service retirement benefits under section 145.32, 145.33, 145.331, 145.34, or 145.46 of the Revised Code;

(b) Age and service retirement benefits paid by the public employees retirement system under section 145.37 of the Revised Code.

(2) "Other system retiree" means both of the following:

(a) A member or former member of the OHIO police and firemen's disability and FIRE pension fund, state teachers retirement system, school employees retirement system, state highway patrol retirement system, or Cincinnati retirement system who is receiving age and service or commuted age and service retirement benefits or a disability benefit from a system of which the person is a member or former member;

(b) A member or former member of the public employees retirement system who is receiving age and service retirement benefits or a disability benefit under section 145.37 of the Revised Code paid by the school employees retirement system or the state teachers retirement system.

(B)(1) Subject to this section, a PERS retiree or other system retiree may be employed by a public employer. If so employed, the PERS retiree or other system retiree shall contribute to the public employees retirement system in accordance with section 145.47 of the Revised Code, and the employer shall make contributions in accordance with section 145.48 of the Revised Code.

(2) A public employer that employs a PERS retiree or other system retiree, or enters into a contract for services as an independent contractor with a PERS retiree who was employed by the public employer at the time of the retiree's retirement shall notify the retirement board of the employment or contract not later than the end of the month in which the employment or contract commences. Any overpayment of benefits to a PERS retiree by the retirement system resulting from delay or failure of the employer to give the notice shall be repaid to the retirement system by the employer.

(3) On receipt of notice from a public employer that a person who is an other system retiree has been employed, the retirement system shall notify the retirement system of which the other system retiree was a member of such employment.

(4)(a) A PERS retiree who has received a retirement allowance for less than six months when employment subject to this section commences shall forfeit the retirement allowance for the period that begins on the date the employment commences and ends on the date that is six months after the date on which the retirement allowance commenced. Service and contributions for that period shall not be included in calculation of any benefits payable to the PERS retiree and those contributions shall be refunded on the retiree's death or termination of the employment. For purposes of this division, "employment" shall include service for which the retiree or the retiree's employer, or both, have waived any earnable salary for such service.

(b) An other system retiree who has received a retirement allowance or disability benefit for less than two months when employment subject to this section commences shall forfeit the retirement allowance or disability benefit for the period that begins on the date the employment commences and ends on the date that is two months after the date on which the retirement allowance or disability benefit commenced. Service and contributions for that period shall not be included in the calculation of any benefits payable to the other system retiree and those contributions shall be refunded on the retiree's death or termination of the employment.

(5) On receipt of notice from the OHIO police and ~~firemen's disability~~ and FIRE pension fund, school employees retirement system, or state teachers retirement system of the re-employment of a PERS retirant, the public employees retirement system shall not pay, or if paid, shall recover, the amount to be forfeited by the PERS retirant in accordance with section 742.26, 3307.381, or 3309.341 of the Revised Code.

(6) A PERS retirant who enters into a contract to provide services as an independent contractor to the employer by which the retirant was employed at the time of retirement or, less than two months after the retirement allowance commences, begins providing services as an independent contractor pursuant to a contract with another public employer, shall forfeit the pension portion of the retirement benefit for the period beginning the first day of the month following the month in which the services begin and ending on the first day of the month following the month in which the services end. The annuity portion of the retirement allowance shall be suspended on the day services under the contract begin and shall accumulate to the credit of the retirant to be paid in a single payment after services provided under the contract terminate. A PERS retirant subject to division (B)(6) of this section shall not contribute to the retirement system and shall not become a member of the system.

(C)(1) Except as provided in division (C)(4) of this section, a PERS retirant employed pursuant to this section shall elect one of the following:

- (a) To receive both compensation for the employment and a retirement allowance;
- (b) To receive compensation for the employment and forfeit the pension portion of the retirement allowance.

(2) A PERS retirant who is described in division (C)(4) of this section or elects to forfeit the pension portion of the retirement allowance under division (C)(1)(b) of this section shall become a new member of the public employees retirement system with all the rights, privileges, and obligations of membership, except that the new membership does not include survivor benefits provided pursuant to section 145.45 of the Revised Code. The pension portion of the PERS retirant's retirement allowance shall cease on the first day of the first month following commencement of the employment and shall thereafter be forfeited until the first day of the first month following termination of the employment. The annuity portion of the retirement allowance shall be suspended on the first day of the first month following commencement of the employment and shall thereafter accumulate to the credit of the PERS retirant to be paid in a single payment after termination of the employment. The retirement allowance shall resume on the first day of the first month following termination of the employment. On termination of the employment, the PERS retirant shall elect to receive either a refund of the retirant's contributions to the retirement system during the period of employment subject to this section or a supplemental retirement allowance based on the retirant's contributions and service credit for that period of employment.

(3) Except as provided in division (B)(4) of this section, there shall be no suspension or forfeiture of any portion of the retirement allowance

payable to other system retirants or to PERS retirants who make an election under division (C)(1)(a) of this section.

(4) A PERS retirant shall elect division (C)(1)(b) of this section if both of the following apply:

- (a) The retirant held elective office in this state, or in any municipal corporation, county, or other subdivision of this state at the time of retirement under Chapter 145. of the Revised Code;
- (b) The retirant was elected or appointed to the same office for the remainder of the term or the term immediately following the term during which the retirement occurred.

(D)(1) On termination of employment under this section, the PERS retirant who makes an election under division (C)(1)(a) of this section or other system retirant may file an application with the public employees retirement system for a benefit under this division, which shall consist of a single life annuity having a reserve equal to the amount of the retirant's accumulated contributions for the period of employment and an equal amount of the employer's contributions. The PERS retirant or other system retirant shall elect either to receive the benefit as a monthly annuity for life or a lump-sum payment discounted to the present value using the current actuarial assumption rate of interest, except that if the monthly annuity would be less than twenty-five dollars per month, the retirant shall receive a lump-sum payment.

(2) A benefit payable under this division shall commence on the latest of the following:

- (a) The last day for which compensation for employment subject to this section was paid;
- (b) Attainment by the PERS retirant or other system retirant of age sixty-five;
- (c) If the PERS retirant or other system retirant was previously employed under this section and is receiving or previously received a benefit under this division, completion of a period of twelve months since the effective date of the last benefit under this division.

(3)(a) If a PERS retirant or other system retirant dies while employed in employment subject to this section, a lump-sum payment calculated in accordance with division (D)(1) of this section shall be paid to the retirant's beneficiary under division (G) of this section.

(b) If at the time of death a PERS retirant or other system retirant receiving a monthly annuity has received less than the retirant would have received as a lump-sum payment, the difference between the amount received and the amount that would have been received as a lump-sum payment shall be paid to the retirant's beneficiary under division (G) of this section.

(4)(a) A PERS retirant or other system retirant subject to this division is not a member of the public employees retirement system, does not have any of the rights, privileges, or obligations of membership, except as specified in this section, and, except as specified in division (D)(4)(b) of this section, is not eligible to receive health, medical, hospital, or surgical benefits under section 145.58 of the Revised Code for employment subject to this section. No amount received under this division shall be included in

determining an additional benefit under section 145.323 of the Revised Code or any other post-retirement benefit increase.

(b) A *PERS* retiree who makes an election under division (C)(1)(a) of this section shall receive primary health, medical, hospital, or surgical insurance coverage from the retiree's employer, if the employer provides coverage to other employees performing comparable work. Neither the employer nor the *PERS* retiree may waive the employer's coverage, except that the *PERS* retiree may waive the employer's coverage if the retiree has coverage comparable to that provided by the employer from a source other than the employer or the public employees retirement system. If a claim is made, the employer's coverage shall be the primary coverage and shall pay first. The benefits provided under section 145.58 of the Revised Code shall pay only those medical expenses not paid through the employer's coverage or coverage the *PERS* retiree receives through a source other than the retirement system.

(E) If the disability benefit of an other system retiree employed under this section is terminated, the retiree shall become a member of the public employees retirement system, effective on the first day of the month next following the termination with all the rights, privileges, and obligations of membership. If such person, after the termination of the disability benefit, earns two years of service credit under this system or under the OHIO police and firemen's disability and FIRE pension fund, state teachers retirement system, school employees retirement system, or state highway patrol retirement system, the person's prior contributions as an other system retiree under this section shall be included in the person's total service credit as a public employees retirement system member, and the person shall forfeit all rights and benefits of this section. Not more than one year of credit may be given for any period of twelve months.

(F) A *PERS* retiree who performs services for a public employer as an independent contractor pursuant to a contract with the employer shall not make contributions to the public employees retirement system or become a member of the system. Except as provided in division (B)(6) of this section, there shall be no suspension or forfeiture of the retiree's retirement allowance.

(G) A *PERS* retiree or other system retiree employed under this section may designate one or more persons as beneficiary to receive any benefits payable under this section due to death. The designation shall be in writing duly executed on a form provided by the public employees retirement board, signed by the *PERS* retiree or other system retiree, and filed with the board prior to death. The last designation of a beneficiary revokes all previous designations. The *PERS* retiree's or other system retiree's marriage, divorce, marriage dissolution, legal separation, withdrawal of account, birth of a child, or adoption of a child revokes all previous designations. If there is no designated beneficiary, the beneficiary is the beneficiary determined under division (D) of section 145.43 of the Revised Code. If any benefit payable under this section due to the death of a *PERS* retiree or other system retiree is not claimed by a beneficiary within five years after the death, the amount payable shall be

transferred to the income fund and thereafter paid to the beneficiary or the estate of the *PERS* retiree or other system retiree on application to the board.

(H) This section does not affect the receipt of benefits by or eligibility for benefits of any person who on August 20, 1976, was receiving a disability benefit or service retirement pension or allowance from a state or municipal retirement system in Ohio and was a member of any other state or municipal retirement system of this state.

(I) The public employees retirement board may adopt rules to carry out this section.