

OHIO POLICE & FIRE PENSION FUND
140 EAST TOWN STREET
COLUMBUS, OHIO 43215

MEMORANDUM

Date: March 30, 2020

To: OP&F Employers, Active and Retired Members

From: Mary Beth Foley, General Counsel *m B F*

Subject: Guidance from OP&F for our Active Members nearing DROP
Maximum and/or Retired Members considering returning to work
during the corona pandemic

The law governing the Ohio Police and Fire Pension Fund's (OP&F) Deferred Retirement Option Program (DROP) sets forth an eight-year maximum participation period. ORC Sections 742.44 and 742.444 provide that a DROP participant "must terminate active police/fire service and begin receiving a pension **not later than the date that is eight years** after the effective date of the election to participate in DROP or be subject to the forfeiture provisions of division (C) of section 742.444 of the Revised Code." Since there is no discretion given to the Board to extend this maximum participation period, a statutory change would need to be made to extend the maximum period beyond eight years. The emergency Corona virus response bill passed last week by the Ohio general assembly did not include such extension nor would an Ohio statutory change be sufficient. The DROP program would have to be amended with the Internal Revenue Service (IRS) as it is the internal revenue code, not state law, which governs the tax favorable treatment of a DROP program. OP&F has a favorable Private Letter Ruling from the IRS for DROP, so any proposed changes to the terms of the plan could have adverse tax consequences. Therefore, we would advise members and employers who desire to retain full time police and firefighters to re-employ OP&F members who have reached the DROP max date.

Members who retire out of DROP can be re-hired by their employer and become a re-employed retiree pursuant to ORC 742.26. Division (D) of the statute

provides that if a police officer or firefighter returns to public employment covered under any of the Ohio retirement systems (ORS), including OP&F, within two months of his or her retirement date from an OP&F employer, then up to **two months** of pension payments for such period must be forfeited. Also, re-employed retiree contributions that fall under this penalty are excluded from the calculation of the re-employed retiree benefit and are refunded through the employer. ¹

We note that the General Assembly in H.B. 197 provided waiver of the “revolving door penalty” for re-employed retirees for specific agencies. Uncodified section 13 of the bill provides that a public retirement system retiree that is rehired by the Department of Rehabilitation and Correction, Youth Services, Mental Health and Addiction Services, Veteran Services or Development Disabilities is not required to forfeit their retirement allowance during the declared emergency beginning 3/9/20, but not beyond 12/1/20. Since there is no such exception for persons working in public safety positions, a similar amendment could be proposed by employers when the General Assembly reconvenes in June and possibly be made retroactive to the declaration of the emergency (3/9/20). Our final note would be that members and employers should specifically discuss whether re-employed police and fire retirees would be allowed by the employer to remain in the employer’s group health plan, or would be required to use OP&F’s Health Reimbursement Arrangement. These details will be important to both members and employers.

For additional information, visit our website to review the Member Guide to Public Re-Employment: <http://www.op-f.org/Files/MGPublicReemployment.pdf>.

¹ There is a limited exception to the forfeiture penalty under Administrative Rule 742-3-09(C). This rule provides that forfeiture will not occur if an OP&F retiree was employed in any position under another Ohio public retirement system on the effective retirement benefit date and had been continuously employed for sixty days before the effective retirement benefit date. That is not the scenario here.