

TRANSFER OF PUBLIC EMPLOYEES

236.605 Definitions for ORS 236.605 to 236.640. As used in ORS 236.605 to 236.640:

(1) “Public employee” means an employee whose compensation is paid from public funds.

(2) “Public employer” includes the state, or cities, or counties, or special districts but not including school districts, or an Oregon nonprofit corporation any of which has accepted the transfer of a public program from a public employer in this state for maintenance and operation. [1991 c.918 §2; 1995 c.286 §20]

236.610 Rights of employee when duties assumed by different public employer; employer duties. (1) No public employee shall be deprived of employment solely because the duties of employment have been assumed or acquired by another public employer, whether or not an agreement, annexation or consolidation with the present employer is involved. Notwithstanding any statute, charter, ordinance or resolution, but subject to ORS 236.605 to 236.640, the public employee shall be transferred to the employment of the public employer that assumed or acquired the duties of the public employee, without further civil service examination.

(2) The transferred public employee shall not have the employee’s salary reduced as a result of a transfer under this section during the first 12 months of employment with the receiving employer. After the first 12 months of employment with the receiving employer, the transferred public employee shall be placed at the closest salary for the position as designated under the receiving employer’s salary schedule.

(3) It is the responsibility of the transferring employer to liquidate accrued compensatory time at the time of transfer, consistent with any applicable statute or collective bargaining agreement.

(4)(a) At the time of transfer, the transferred public employee may elect to:

(A) Retain any accrued sick leave;

(B) Retain up to 80 hours of vacation leave; and

(C) Retain additional vacation leave if agreed to by the transferring employer, the receiving employer and the transferred public employee.

(b) At the time of transfer, the transferring employer shall pay to the receiving employer a sum equal to the number of hours of accrued leave retained times the employee’s hourly rate of pay.

(c) After the transfer, the receiving employer shall grant any leaves according to its rules or any bargaining agreement governing use of leaves.

(5) In the event that any transferred employee is subject to a waiting period for coverage of preexisting conditions under the health insurance plan of the receiving employer, the receiving employer shall arrange for a waiver of such waiting period with its health insurer. The transferring employer shall reimburse the receiving employer for the additional premium costs, if any, resulting from such waiver, for a period of not to exceed 12 months.

(6) In transferring a public employee under subsection (1) of this section, the employer shall furnish the employment records of that employee to the receiving

employer at the time of transfer. The time of transfer shall be by written agreement between the public employers involved.

(7) If the public employer that is transferring a public employee participates in the Public Employees Retirement System, the transferring employer and the receiving employer must enter into a written agreement that addresses the manner in which any unfunded Public Employees Retirement System liability or surplus of the transferring public employer will be paid or credited, as required by ORS 238.231. [1963 c.204 §§1, 2; 1971 c.500 §1; 1991 c.918 §3; 1995 c.286 §21; 2003 c.802 §165; 2005 c.808 §24]

236.620 Status of transferred employee. (1) A public employer who receives a transferred employee under ORS 236.610 (1), including an employee whose transfer is provided for by an agreement under ORS 190.010, shall place that employee on its employee roster, subject to the following:

(a) If the employee was serving a probationary period with the employer at the time of transfer, the past service of the employee on probation shall apply on the regular probation requirements of the receiving employer.

(b) Notwithstanding any other provision of law applicable to a retirement system for employees of the prior employer or of the receiving employer, but subject to subsection (2) of this section, the employee at the option of the employee may elect to continue for 12 months under any retirement system in which the employee was participating prior to transfer or, if the employee meets the qualifications therefor, the employee may elect to participate in the retirement system available to employees of the receiving employer. The employee's election shall be in writing and made within 30 days after the date of transfer. If the employee elects to continue under the retirement system in which the employee was participating prior to transfer, the employee shall retain all rights and be entitled to all benefits under that system, the employee shall continue to make contributions to that system and the receiving employer shall make contributions on behalf of the employee to that system as required of employers participating in that system, as if the transfer had not occurred.

(c) The employee shall retain the seniority the employee accrued under prior employment, but no regular employee of the receiving employer shall be demoted or laid off by reason of that seniority at the time the transfer occurs. Thereafter, the employee's seniority from the transferring employer shall be regarded as seniority acquired under the receiving employer.

(d) The employee otherwise shall enjoy the same privileges, including benefits, hours and conditions of employment, and be subject to the same regulations as other employees of the receiving employer.

(2) The Public Employees Retirement Board may terminate membership in the Public Employees Retirement System for any transferred employee if the board determines that allowing membership for the employee would cause the system or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [1963 c.204 §3; 1967 c.550 §10; 1991 c.918 §4; 1995 c.286 §22; 1999 c.317 §4]

236.630 Authority of new employer over transferred employee. A public employer who receives a transferred public employee under ORS 236.610 (1) shall place that employee in a position comparable to the position the employee enjoyed under prior employment, subject to the following:

(1) The receiving employer, in determining a comparable position, shall consider the employee's educational and physical qualifications, experience, and the salary, duties and responsibilities of prior employment.

(2) If the receiving employer finds that no comparable position exists under subsection (1) of this section, the employee shall be offered a lesser position, if such position is available, according to the qualifications of the employee, by the receiving employer. The finding and action of such employer under this subsection, and subsection (3) of this section shall be subject to a hearing upon the employee's request and subject to review under ORS 34.010 to 34.100.

(3) If the receiving employer finds that no position exists, the employee shall be listed as a regular laid-off employee and shall have priority to appointment over other persons eligible for any position for which the employee is qualified, subject to any applicable collective bargaining agreement. [1963 c.204 §4; 1991 c.918 §5; 1995 c.286 §23]

236.640 Reemployment right of employee at end of cooperation agreement. At the end of a cooperation agreement the employee transferred shall be entitled to the position of the employee with the transferring employer prior to transfer, if the employee has remained an employee of the transferee employer in good standing to the termination of the agreement. [1963 c.204 §5]