



MEMO 2025-1

To: Participating Retirement Employers

From: NDPERS

Date: February 5, 2025

RETURN TO WORK CLARIFICATION & POSSIBLE IRS PENALTIES

Our federal tax consultant provided clarification regarding Return-to-Work IRS Treasury Regulation § 1.401-1(a)(2)(i); Revenue Ruling ("Rev. Rul.") 74-254, 1974-1 C.B. 94; Internal Revenue Code ("Code") § 401(a)(36).

WHAT'S THE CLARIFICATION?

Retirees may meet "Normal Retirement" provisions in their NDPERS plan for unreduced benefits. *However*, based on the IRS clarification, retirees under the age of 59 ½ at the time of retirement must meet the "Termination of Employment" provisions before returning to work.

"TERMINATION OF EMPLOYMENT" MEANS THE RETIREE MUST BE OFF ALL COVERED PAYROLL FOR AT LEAST A MINIMUM OF 31 DAYS BEFORE RETURNING TO WORK. AT THE TIME OF RETIREMENT, THERE CANNOT BE ANY INTENT FOR THE RETIREE TO RETURN TO WORK, EITHER WRITTEN OR VERBAL.

Adhering to the "Termination of Employment" provisions will help the retiree avoid the 10% early withdrawal IRS penalty. **This regulation applies to retirees who meet the "Rule" and retire prior to age 59 ½ and to retirees of the Public Safety plans with the normal retirement age of 55.**

REPORTING IN 1099-R

If there is not a break in service of 31 days, the 10% early withdrawal penalty must be reported on the retiree's 1099-R each calendar year for all retirement benefit payments paid to the retiree. The 10% early withdrawal penalty will remain on the retiree's 1099-R until age 59 ½ OR until there is a break in service that meets the minimum of 31 days requirement, whichever occurs first.

SPECIAL PROVISIONS: HIGHWAY PATROL RETIREMENT PLAN

Special provisions apply for retirees of the Highway Patrol Plan, as this Plan's provisions are under NDCC 39-03. Therefore, Highway Patrol Plan retirees, who return to work and are eligible to participate in retirement plans under N.D.C.C. 54-52 (Main,* National Guard, Public Safety, Judges, BCI Law Enforcement, and Defined Contribution), may return to work without an IRS early withdrawal penalty. However, should a retiree of the Highway Patrol Plan return to employment in a civilian position for the Highway Patrol (same employer), the 10% early withdrawal IRS penalties may apply.

QUESTIONS?

Retirees should visit with a tax advisor regarding this penalty if considering any return-to-work circumstances.

**Due to the closure of the Main Plan on December 31, 2024, a retiree from the Highway Patrol Plan who returns to work with any employer will be enrolled in the Defined Contribution 2025 Tier 3, unless the retiree has deferred Main Plan service or is hired into a position that is eligible for another Defined Benefit Plan (e.g. Public Safety).*