

Retirement Plan Administration Issues Relating to Simultaneous Employment and Receipt of Retirement Benefits from the Same Employer

The Issue of “In-Service Distributions”

As employees near retirement age, PMRS receives questions from both employers and employees about how an employee could continue working and begin receiving retirement benefits or how a retired employee could come back to work and continue receiving their retirement benefits. The Internal Revenue Service (IRS), which regulates the tax-qualified status of retirement plans, identifies this concept of simultaneous employment with one employer and the receipt of retirement benefits from that same employer as an “in service distribution” from the retirement plan.

The IRS has had a long standing general prohibition of tax-qualified retirement plans being allowed to provide in-service distributions. Over a number of years however, there has been a relaxation of this prohibition under very limited circumstances. These exceptions relate to the specific factual circumstances combined with the appropriate language found in the specific retirement plan.

Current PMRS Policy and Procedure on In-Service Distributions

In 2011, PMRS revised Policy 2010-06, Retiree Return to Service. This policy identifies three requirements and, if those are met, four additional factors to consider for PMRS to allow for an in-service distribution. The three requirements are:

1. Member has reached superannuation age;
2. Member is currently not employed with the Municipality due to a bona fide employment termination; and
3. Member is currently receiving a PMRS retirement benefit based on previous employment with the Municipality.

If the three requirements are met, then there are four additional factors to consider in determining as to whether there can be an in-service distribution:

1. The “bona fide” employment termination must have resulted in a complete severing of employment connections with the Municipality;
2. There has been no formal or informal pre-arranged agreement with the Member to be reemployed nor should there have been any reasonable anticipation of any such re-employment;
3. A reasonable amount of time has passed between the Member’s previous employment termination and his reemployment; and
4. Whether the services to be performed after reemployment are closely related to the services that were most recently performed before employment termination?

Neither the three requirements nor the four factors are affected if a Member’s employment status changes from full-time to part-time and regardless of whether the part-time position is required, optional or prohibited from being a Plan Member.

Once PMRS receives all the relevant information, it will decide as to whether an in-service distribution can be allowed after reemployment. The decision as to whether in-service distributions are allowed is fact

specific regardless of the intent of the employer and the employee. It is worth noting that it is currently impossible for an employee to receive an in-service distribution without a bona-fide employment termination.

New PMRS Plan Documents Allow Employers More Flexibility to Provide In-Service Distributions

PMRS wants the municipality to solely decide whether in-service distributions are available. Further, PMRS, no longer wishes to have to regularly determine an employee's eligibility for an in-service distribution based on fact-specific circumstances. To that end, PMRS has recently created a new set of retirement plan documents that has enhanced the ability of municipalities to determine the extent to which they can provide in-service distributions once Plan Members or Plan Retirees reach Normal Retirement Age. **In order for a municipality to avail themselves of these plan enhancements, they will need to upgrade their plan to the new documents.**

A municipality can now offer in-service distributions through two Elective Plan Options

1. For Current Plan Members, the municipality can allow (or prohibit) In-Service Distributions without employment termination

The Municipality will elect one of two alternatives:

- a. Prohibit any Plan Member from starting retirement benefits without Employment Termination, or
- b. Allow any Plan Member who has reached Normal Retirement Age to apply for and begin receiving retirement benefits without Employment Termination.

If a Plan Member is allowed to receive and elects to receive an in-service distribution, that Member is then considered a Retired Member who will no longer:

- accrue additional Plan service
- make required or optional Plan contributions
- be eligible for a Plan disability benefit (if applicable)

Under this option, there does not need to be an employment termination in order for an employee to receive an in-service distribution. For example, an employee could be an accruing service as an active plan participant on Friday and can begin collecting retirement benefits (via an in-service distribution) on Monday.

2. For Retirees, the municipality can allow (or prohibit) In-Service Distributions if Re-employed

The Municipality will elect one of two alternatives:

- a. Require re-employed retirees to cease receiving their retirement benefits, rejoin the retirement plan (if eligible) and then, when employment is once again terminated, recalculate an adjusted retirement benefit.
- b. Allow any re-employed retiree to elect to: (1) continue receiving benefits and not rejoin the Plan as an Active Member or (2) to cease receiving their retirement benefits, rejoin the Plan as an Active Member and then, when employment is once again terminated, recalculate an adjusted retirement benefit.

Impact of Allowing In-Service Distributions

It should be noted that it is completely in the discretion of a municipality to offer one, both or neither of these two elective Plan options. However, if allowed by the municipalities, in-service distributions must be offered to all employees. **Moreover, these new options will be applied to Plan Members and Retirees regardless of whether they are employed or re-employed in a Plan eligible position.**

For example, if a current, full-time Active Plan Member is willing to move to a part-time position that will change the employee to an Inactive Plan Member, the Municipality must have elected in their new Plan Document to allow any Active Plan Member who has reached Normal Retirement Age to begin receiving retirement benefits regardless of their type of position after beginning to receive retirement benefits. The same applies to Plan Retirees who are re-employed; the Municipality must elect in their Plan Document to allow them to continue receiving retirement benefits regardless of their type of position after being re-employed.

If a municipality wishes to offer in-service distributions both with and without an employment termination, they should contact PMRS to discuss how to update its plan documents.