

# DRAFT

## SUMMARY

Makes certain graduate and post-graduate student workers eligible employees for purposes of Oregon Public Service Retirement Plan.

### A BILL FOR AN ACT

Relating to the status of student workers under the Oregon Public Service Retirement Plan; creating new provisions; and amending ORS 238A.005.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 238A.005, as amended by section 3, chapter 83, Oregon Laws 2022, is amended to read:

238A.005. For the purposes of this chapter:

(1) “Active member” means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

(2) “Actuarial equivalent” means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

(3) “Board” means the Public Employees Retirement Board.

(4) “Eligible employee” means a person who performs services for a participating public employer, including persons considered employees of a participating public employer under 26 U.S.C. 3121(d)(2), as in effect on January 1, 2022, and elected officials other than judges. “Eligible employee” does not include:

(a) Persons engaged as independent contractors;

*[(b) Aliens working under a training or educational visa;]*

1 [(c)] **(b)** Persons provided sheltered employment or make-work by a public  
2 employer;

3 [(d)] **(c)** Persons categorized by a participating public employer as student  
4 employees, **other than:**

5 **(A) Persons employed in positions classified as post-doctoral scholar**  
6 **positions by a public university listed in ORS 352.002, or by the Oregon**  
7 **Health and Science University, under ORS 350.370; or**

8 **(B) Graduate students appointed by a public university listed in**  
9 **ORS 352.002 or the Oregon Health and Science University to perform**  
10 **teaching, research or administrative duties;**

11 [(e)] **(d)** Any person who is in custody in a state institution;

12 [(f)] **(e)** Employees of foreign trade offices of the Oregon Business Devel-  
13 opment Department who live and perform services in foreign countries under  
14 the provisions of ORS 285A.075 (1)(g);

15 [(g)] **(f)** An employee actively participating in an alternative retirement  
16 program established under ORS 353.250 or an optional retirement plan es-  
17 tablished under ORS 341.551;

18 [(h)] **(g)** Employees of a public university listed in ORS 352.002 who are  
19 actively participating in an optional retirement plan offered under ORS  
20 243.815;

21 [(i)] *Persons employed in positions classified as post-doctoral scholar posi-*  
22 *tions by a public university listed in ORS 352.002, or by the Oregon Health*  
23 *and Science University, under ORS 350.370;]*

24 [(j)] **(h)** Any employee who belongs to a class of employees that was not  
25 eligible on August 28, 2003, for membership in the system under the pro-  
26 visions of ORS chapter 238 or other law;

27 [(k)] **(i)** Any person who belongs to a class of employees who are not eli-  
28 gible to become members of the Oregon Public Service Retirement Plan un-  
29 der the provisions of ORS 238A.070 (2);

30 [(L)] **(j)** Any person who is retired under ORS 238A.100 to 238A.250 or  
31 ORS chapter 238 and who continues to receive retirement benefits while

employed; and

[(m)] (k) Judges.

(5) “Firefighter” means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

(b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;

(c) An employee of the State Fire Marshal whose primary duties include fire investigation, fire prevention, fire safety, fire control or fire suppression;

(d) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064; and

(e) An employee of the Oregon Military Department whose primary duties include fighting structural, aircraft, wildland or other fires.

(6) “Fund” means the Public Employees Retirement Fund.

(7)(a) “Hour of service” means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) “Hour of service” does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable unemployment compensation laws.

(8) “Inactive member” means a member of the pension program or the

1 individual account program of the Oregon Public Service Retirement Plan  
2 whose membership has not been terminated, who is not a retired member and  
3 who is not employed in a qualifying position.

4 (9) "Individual account program" means the defined contribution individ-  
5 ual account program of the Oregon Public Service Retirement Plan estab-  
6 lished under ORS 238A.025.

7 (10) "Institution of higher education" means a public university listed in  
8 ORS 352.002, the Oregon Health and Science University or a community  
9 college, as defined in ORS 341.005.

10 (11) "Member" means an eligible employee who has established member-  
11 ship in the pension program or the individual account program of the Oregon  
12 Public Service Retirement Plan and whose membership has not been termi-  
13 nated under ORS 238A.110 or 238A.310.

14 (12) "Participating public employer" means a public employer as defined  
15 in ORS 238.005 that provides retirement benefits for employees of the public  
16 employer under the system.

17 (13) "Pension program" means the defined benefit pension program of the  
18 Oregon Public Service Retirement Plan established under ORS 238A.025.

19 (14) "Police officer" means a police officer as described in ORS 238.005.

20 (15) "Qualifying position" means one or more jobs with one or more par-  
21 ticipating public employers in which an eligible employee performs 600 or  
22 more hours of service in a calendar year, excluding any service in a job for  
23 which benefits are not provided under the Oregon Public Service Retirement  
24 Plan pursuant to ORS 238A.070 (2).

25 (16) "Retired member" means a pension program member who is receiving  
26 a pension as provided in ORS 238A.180 to 238A.195.

27 (17)(a) "Salary" means the remuneration paid to an active member in re-  
28 turn for services to the participating public employer, including  
29 remuneration in the form of living quarters, board or other items of value,  
30 to the extent the remuneration is, or would be if the member were an Oregon  
31 resident, includable in the employee's taxable income under Oregon law.

1 “Salary” includes the additional amounts specified in paragraph (b) of this  
2 subsection, but does not include the amounts specified in paragraph (c) of  
3 this subsection, regardless of whether those amounts are includable in taxa-  
4 ble income.

5 (b) “Salary” includes the following amounts:

6 (A) Payments of employee and employer money into a deferred compen-  
7 sation plan that are made at the election of the employee.

8 (B) Contributions to a tax-sheltered or deferred annuity that are made at  
9 the election of the employee.

10 (C) Any amount that is contributed to a cafeteria plan or qualified  
11 transportation fringe benefit plan by the employer at the election of the  
12 employee and that is not includable in the taxable income of the employee  
13 by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2021.

14 (D) Any amount that is contributed to a cash or deferred arrangement by  
15 the employer at the election of the employee and that is not included in the  
16 taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect  
17 on December 31, 2021.

18 (E) Retroactive payments described in ORS 238.008.

19 (F) The amount of an employee contribution to the individual account  
20 program that is paid by the employer and deducted from the compensation  
21 of the employee, as provided under ORS 238A.335 (1) and (2)(a).

22 (G) The amount of an employee contribution to the individual account  
23 program that is not paid by the employer under ORS 238A.335.

24 (H) Wages of a deceased member paid to a surviving spouse or dependent  
25 children under ORS 652.190.

26 (c) “Salary” does not include the following amounts:

27 (A) Travel or any other expenses incidental to employer’s business which  
28 is reimbursed by the employer.

29 (B) Payments made on account of an employee’s death.

30 (C) Any lump sum payment for accumulated unused sick leave, vacation  
31 leave or other paid leave.

1 (D) Any severance payment, accelerated payment of an employment con-  
2 tract for a future period or advance against future wages.

3 (E) Any retirement incentive, retirement bonus or retirement gratuitous  
4 payment.

5 (F) Payment for a leave of absence after the date the employer and em-  
6 ployee have agreed that no future services in a qualifying position will be  
7 performed.

8 (G) Payments for instructional services rendered to public universities  
9 listed in ORS 352.002 or the Oregon Health and Science University when  
10 those services are in excess of full-time employment subject to this chapter.  
11 A person employed under a contract for less than 12 months is subject to this  
12 subparagraph only for the months covered by the contract.

13 (H) The amount of an employee contribution to the individual account  
14 program that is paid by the employer and is not deducted from the compen-  
15 sation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

16 (I) Compensation described and authorized under ORS 341.556 that is not  
17 paid by the community college employing the faculty member.

18 (J) Compensation described and authorized under ORS 352.232 that is not  
19 paid by the public university employing the officer or employee.

20 (K) Compensation described and authorized under ORS 353.270 that is not  
21 paid by Oregon Health and Science University.

22 (L) For years before 2020, any amount in excess of \$200,000 for a calendar  
23 year. If any period over which salary is determined is less than 12 months,  
24 the \$200,000 limitation for that period shall be multiplied by a fraction, the  
25 numerator of which is the number of months in the determination period and  
26 the denominator of which is 12. The board shall adopt rules adjusting this  
27 dollar limit to incorporate cost-of-living adjustments authorized by the  
28 Internal Revenue Service.

29 (M) For years beginning on or after January 1, 2020, any amount in excess  
30 of \$195,000 for a calendar year. If any period over which salary is determined  
31 is less than 12 months, the \$195,000 limitation for that period shall be

1 multiplied by a fraction, the numerator of which is the number of months in  
2 the determination period and the denominator of which is 12. On January 1  
3 of each year, the board shall adjust the dollar limit provided by this sub-  
4 paragraph to reflect any percentage changes in the Consumer Price Index for  
5 All Urban Consumers, West Region (All Items), as published by the Bureau  
6 of Labor Statistics of the United States Department of Labor.

7 (18) "System" means the Public Employees Retirement System.

8 (19) "Workers' compensation benefits" means:

9 (a) Payments made under ORS chapter 656; or

10 (b) Payments provided in lieu of workers' compensation benefits under  
11 ORS 656.027 (6).

12 **SECTION 2. The amendments to ORS 238A.005 by section 1 of this**  
13 **2023 Act apply only to service performed for a participating public**  
14 **employer on or after the effective date of this 2023 Act.**