

**WAC 415-108-425 How do I determine if I have choice rights or transfer rights to PERS Plan 3? (1) Definitions:**

(a) **"Concurrently employed"** means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.

(b) **"Exercising choice rights"** means choosing Plan 2 or Plan 3 or defaulting into Plan 3.

(c) **"Phase 1 employer"** means state agencies and institutes of higher education.

(d) **"Phase 2 employer"** means all other employers.

(e) **"Phase 1 transfer period"** is the period from March 1, 2002, through and including August 31, 2002.

(f) **"Phase 2 transfer period"** is the period from September 1, 2002, through and including May 31, 2003.

(2) **What determines if I have "choice rights" or "transfer rights"?** Your current employment status and your employment history will be used to determine if you have choice rights or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) **What are "choice rights" and how are they applied?** "Choice rights" refers to your right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3.

(a) You will be reported in Plan 2 until you exercise choice rights.

(b) You must make a choice within ninety days of your first day of employment in an eligible position.

(c) You will be defaulted into Plan 3 if you continue employment past the ninety-day choice period without making a choice.

(d) You may exercise choice rights only once.

(4) **Do I have "choice rights"?**

(a) You have choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your choice rights, you retain choice rights if you are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your choice rights, you retain choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(c) You have choice rights if you transferred from membership in PERS to membership in the school employees' retirement system and then became employed in an eligible PERS position on or after March 1, 2002, with a Phase 1 employer or on or after September 1, 2002, with a Phase 2 employer.

(5) **What are "transfer rights" and how are they applied?** "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

(6) **Do I have transfer rights?**

(a) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and

(iii) Were not eligible for choice rights under subsection (4) (a) or (c) of this section.

(b) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and

(iii) Were not eligible for choice rights under subsection (4) (b) or (c) of this section.

(7) **What are "January transfer rights" and how are they applied?**

"January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

(8) **Do I have January transfer rights?**

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 **during** the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer **before** the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer **before** the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer **during** the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer **during** the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began **after** the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began **after** the Phase 2 transfer period ended.

(9) **What happens after I become a Plan 3 member?** Once you choose Plan 3 or default to Plan 3 or transfer to Plan 3, you will remain a Plan 3 member. You will not have any additional transfer rights or choice rights to exercise.

(10) **What rules apply to me if I am concurrently employed?** If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

**Examples:** *The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.*

Plan Choice Rights:
<b>Example 1:</b> Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:
<b>A.</b> April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a <b>plan choice</b> for Plan 2 or Plan 3. See subsection (3)(b) of this section.
<b>B.</b> After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make his <b>plan choice</b> . See subsection (4)(a)(i) of this section.
<b>C.</b> Pat chooses Plan 3 within his ninety days. Pat is now a Plan 3 member regardless of future employment. <i>See subsection (9) of this section.</i>
<b>D.</b> Instead of choosing Plan 3, Pat lets his ninety day plan choice period go by with out choosing Plan 2 or Plan 3. Pat is defaulted into Plan 3 and is now a Plan 3 member regardless of future employment. <i>See subsections (3)(c) and (9) of this section.</i>
Transfer Rights:
<b>Example 2:</b>
<b>A.</b> Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to <b>transfer</b> to Plan 3 in the transfer period (March 1, 2002, through August 31, 2002). See subsection (6)(a) of this section.
<b>B.</b> However, Chris <b>did not make a decision</b> to transfer prior to the close of the Phase 1 <b>transfer period</b> . If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. <i>See subsection (8)(a) of this section.</i>
<b>C.</b> In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service <b>after</b> the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection (8)(b) of this section.
Irrevocable Choice Rule:
<b>Example 3:</b> Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, he has ninety days to make a <b>plan choice</b> for Plan 2 or Plan 3. Mike chooses Plan 3 within his ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection (9) of this section.

Irrevocable Choice Rule:

**Example 4:** Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, he has ninety days to make a **plan choice** for Plan 2 or Plan 3. Pat chooses Plan 2 within his ninety days. Pat is now a Plan 2 member who can no longer have a **plan choice** regardless of future employment. *See subsection (3)(d) of this section.*

Concurrent Employment in Phase 1 and 2:

**Example 5:** Using example 2A, Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, **prior to transferring** to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window before he can transfer to Plan 3. See subsection (10) of this section.

[Statutory Authority: RCW 41.50.050(5), 41.40.785, and 2000 c 247. WSR 03-15-007, § 415-108-425, filed 7/3/03, effective 8/1/03. Statutory Authority: RCW 41.50.050(5) and 41.40.785. WSR 02-03-120, § 415-108-425, filed 1/23/02, effective 3/1/02.]