

WSR 23-05-078  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS

[Filed February 14, 2023, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-025.

Title of Rule and Other Identifying Information: Law enforcement officers' and firefighters' (LEOFF) Plan 2 return to work options, creating WAC 415-104-109.

Hearing Location(s): On March 28, 2023, at 2:00 p.m., by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details, Zoom link <https://us02web.zoom.us/j/81222434766>, Meeting ID 812 2243 4766, Dial In 1-253-205-0468.

Date of Intended Adoption: March 29, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by March 27, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by March 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify language regarding the benefit options available to LEOFF Plan 2 retirees and members who return to work in DRS-covered positions.

Statutory Authority for Adoption: RCW 41.50.050.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

February 14, 2023  
Bianca Stoner  
Rules Coordinator

OTS-3799.3

NEW SECTION

**WAC 415-104-109 How will my retirement membership be determined if I separate from my LEOFF 2 position and begin employment with a new employer in a position that is eligible for a different retirement system administered by DRS, such as PERS, PSERS, TRS, or SERS?** (1) If you separate from LEOFF employment, but are not yet eligible to commence a normal retirement benefit, you will become a member in another DRS retirement system, if you meet the eligibility qualifications in that new system for purposes of your new position. You will become a dual member.

When you apply to begin your LEOFF 2 pension once you qualify for normal retirement, your membership in the new retirement system will end. You will not be eligible to begin collecting your pension in your other retirement plan until you have separated employment from that employer.

If you do not apply for your LEOFF pension immediately upon meeting normal retirement, your pension benefit will be paid retroactively following your application for your LEOFF benefit.

**Example:** After 20 years of service as a firefighter for the city of Spokane, at age 51 you separate from employment with the city and choose not to begin collecting an early retirement from LEOFF 2. You accept a PERS eligible position with Spokane County, at which point you are mandated into PERS membership. You will qualify as a dual member. At normal retirement age, you will be able to begin your LEOFF pension; however, if you do so your PERS membership will end, and you will not begin to draw a pension from PERS until you separate from employment with the county. If you do not begin your LEOFF pension at normal retirement age, you will continue to accrue PERS service credit and be able to retire from both systems when you separate employment. Your LEOFF pension will also be paid retroactively to normal retirement age.

**Example:** After 20 years of service as a firefighter for the Benton County, at age 45 you accept a PERS eligible position with the same employer (Benton County), and you are mandated into PERS membership. You will qualify as a dual member. At normal retirement age, you will not be able to begin your LEOFF pension since you have not yet separated employment with the county. When you do separate employment, your LEOFF pension will be paid retroactively to normal retirement age.

(2) If you separate from LEOFF employment and are eligible to commence a normal retirement benefit, you will have the same requirements and options outlined in WAC 415-104-111(2).

**Example:** After 20 years of service as a police officer with the city of Seattle, you separate from employment with the city at age 56. Prior to commencing your LEOFF pension, you accept a SERS covered position with the Seattle public schools. You have two options:

(a) You can begin your LEOFF pension at any point and forgo membership in SERS.

(b) You can join SERS membership. You will not be able to begin your LEOFF pension until you have separated employment with the school district at which point you will receive a retroactive payment for the LEOFF pension payments you missed and your SERS pension benefit would begin if you qualify.

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