

**WSR 24-11-062
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed May 13, 2024, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-076.

Title of Rule and Other Identifying Information: Creating an exclusion from the definition of full-time employment for the purpose of automatic enrollment into the state's deferred compensation plan (DCP) for seasonal workers.

Hearing Location(s): On July 1, 2024, at 2:00 p.m. The hearing will be conducted through Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 258 311 607 040, Passcode baSJCC; or by phone 833-322-1218, Code 501 027 137#.

Date of Intended Adoption: July 8, 2024.

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, by June 26, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by June 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under RCW 41.50.770(3), eligible new state employees are automatically enrolled in DCP unless they waive participation. However, some new employees are in positions that will only last for a limited number of months, so their employment ends before their contributions are deferred. This rule creates an exclusion from the definition of full-time employees so that these employees aren't required to be automatically enrolled.

Statutory Authority for Adoption: RCW 41.50.050 and 41.50.770.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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 DRS.

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.

May 13, 2024
Bianca Stoner
Rules Coordinator

OTS-5276.2

AMENDATORY SECTION (Amending WSR 23-18-025, filed 8/25/23, effective 9/25/23)

WAC 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Automatic enrollment.** A process of enrolling newly hired full-time employees as of January 1, 2017. See WAC 415-501-400 for details.

(3) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

(4) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

(5) **Contributions.** The amount of deferred compensation that you contribute monthly, which can be pretax, taxed, or a combination of both.

(6) **Deferred compensation.** The amount of the participant's compensation that is deferred. Pretax and taxed contributions are both considered deferred compensation. See WAC 415-501-400, 415-501-410, and 415-501-450.

(7) **Deferred compensation program or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

(8) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

(9) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

(10) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over 10 years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

(11) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

(12) **In-plan conversion.** Allows you to take all or a portion of the funds in your pretax account and convert it to a Roth account.

(13) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age 70 1/2.

(14) **Participant.** An eligible employee who:

(a) Is currently deferring compensation under the plan; or

(b) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

(15) **Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410 and 415-501-450.

(16) **Qualified distribution.** A distribution of funds from a designated Roth account that is not subject to further taxation. A qualified distribution may only occur:

(a) After a five-taxable-year period of participation in the Roth account; and

(b) If the distribution is made: (i) On or after attainment of age 59 1/2, (ii) becoming permanently disabled, or (iii) death.

(17) **Roth account.** A form of deferred compensation in which funds are subject to federal income tax at the time of contribution.

(18) **Seasonal employee.** An employee whose position is anticipated to last fewer than five consecutive months.

(19) **You,** as used in this chapter, means a participant as defined in subsection (14) of this section.

AMENDATORY SECTION (Amending WSR 23-18-025, filed 8/25/23, effective 9/25/23)

WAC 415-501-400 What is automatic enrollment? Effective January 1, 2017, state agencies and higher education employers must automatically enroll new full-time employees into the deferred compensation program (DCP). Students who work at a college or university, seasonal employees, and retirees who return to employment are exempt from automatic enrollment but may voluntarily enroll at any time. Local employers, including school districts, may use the automatic enrollment provisions by submitting a resolution to the department.

For state employees and some higher education employees, full-time status is defined in WAC 357-01-174. For employees not covered under WAC 357-01-174, the definition of "full time" is at the employer's discretion.

The default deferral amount is pre-tax with a rate of three percent of your taxable compensation. You may change these at any time (see WAC 415-501-450 for details).

The default investment is the Retirement Strategy Fund that assumes you will retire at age 65. You may change your investments at any time (see WAC 415-501-475 for details).

If you are automatically enrolled in DCP, you will receive a mailed notification of automatic enrollment. If you want to alter your automatic enrollment, here are some actions you can take:

(1) Opt out: To prevent the three percent deferral from being deducted from your paycheck, opt out within 30 days of the date on the automatic enrollment notification. To do so, change the three percent default deduction to zero through your established online account or by contacting the DCP record keeper.

(2) Suspend enrollment and remove your contributions: Following your automatic enrollment, you may withdraw DCP deferrals that have been taken from your paycheck. To do so, change the three percent default deduction to zero and request a permissible withdrawal request form. The completed withdrawal request must be received by the DCP record keeper within 90 days of your first payroll contribution under this section. You will receive a distribution of your contributions, plus or minus earnings. These distributions are not eligible for rollover. If you do not request a permissible withdrawal within 90 days from your first payroll contribution, your contributions will be subject to the provisions for distributions described in WAC 415-501-485.

(3) Change your contribution: Adjust your contributions to a smaller or larger whole percentage or select a specific whole dollar amount. With DCP, you may change your contribution amount at any time. Changing your contribution within the first 90 days of automatic enrollment verifies your participation in the program, making you no longer eligible for permissible withdrawal.

(4) Change your investment selection: Select another DCP investment option. With DCP, you can change your investment options at any time.

(5) Reenroll: If you opt out, you may reenroll in DCP at any time (see WAC 415-501-410).