

Clarification on new membership forms

Note:

The employer entity making the decision to retain these individuals is responsible for compliance regardless of whether they have a separate employer code or are consolidated under a collective employer code for purposes of retirement contribution reporting and payment.

Employers should discuss with their legal counsel on how best to implement/comply with their statutory obligations.

Who should read this notice

Finance directors, payroll, human resources and benefits professionals of OPERS public employers

Situation overview

Effective Jan. 7, 2013, OPERS employers are required to provide notification within pre-determined time frames to individuals who have not had, or will not have OPERS retirement contributions withheld from their earnings. The intent behind the legislative changes was to put a statute of limitations on the time frame in which an individual could request OPERS to issue a membership determination regarding prior service to a public employer for which no OPERS contributions were remitted.

Prior to the statutory changes, there was no limit as to the length of time in which an individual could seek service credit for services they previously provided to a public employer but for which no OPERS contributions were remitted. An individual could, and often did, wait until the point of retirement (sometimes twenty years or more) to request a determination from OPERS. This often resulted in financial hardship to the employer as the employer is responsible for remitting both employer and employee contributions plus interest for failing to properly deduct OPERS contributions at the time the service was provided. The new law permits individuals to request a membership determination within predetermined time frames as to whether they should have been classified as public employees for their service.

Since our December, 2012 Employer Notice that announced both the timelines and new forms, we have received some questions from employers. The following information is intended to provide additional clarification on the statutory changes and the new membership forms required by the new laws.

- *Notice of Right and Request for: Determination for OPERS Membership* (Form PEDREQ). This form applies to individuals who provided personal services to a public employer prior to Jan. 7, 2013 but did not contribute to OPERS for these services.
 - The statute does not provide a limit as to how far back in time an employer must look in their records to identify these individuals. Employers are required to forward this form to an individual's last known address. Employers should discuss with their legal counsel how best to comply with their statutory obligations.
 - The public employer who made the decision to retain the individual for personal services is responsible for forwarding the form to the affected individuals. It is important to note that this may not necessarily be the employer entity that *reports* retirement contributions to OPERS.
 - Employers must forward this form to the affected individuals no later than sixty days after Jan. 7, 2013.



- The affected individuals have one year from Jan. 7, 2013 to request a determination as to whether they should have been classified as a public employee, eligible for OPERS membership for these services.
- Affected individuals who seek a membership determination after Jan. 7, 2014 will not be eligible to have their prior service evaluated for OPERS membership regardless of whether they received the form.
- The PEDREQ form does not need to be sent to the following individuals:
 - Students who filed an exemption
 - Fellows
 - OPERS Retirees, if retirement status is known
 - College and university employees eligible and electing to participate in an Alternative Retirement Plan (ARP)
 - Poll workers earning less than \$500 annually
- The PEDREQ form should be sent to individuals who continued to provide the same or similar services to a contractor that they previously provided to a public employer and for which no retirement contributions were remitted.
- Affected individuals have the *option* to complete the PEDREQ form in order to initiate a request for a determination from OPERS for any service they believe should have been classified as public employment.
- **OPERS will continue to process any certification of unreported time remitted to OPERS by employers. Employers will continue to be billed for undisputed service as a public employee which were inadvertently overlooked or not reported regardless of when the unreported service occurred.**

- *Independent Contractor Acknowledgment* (Form PEDACKN): This form *must* be completed by the individual providing personal services as an independent contractor, or another classification other than a public employee, for services beginning on or after Jan. 7, 2013.
 - The form *must* be completed within 30 days of the date on which the individual commences the services.
 - Employers may redact the full or partial social security number information on the copy forwarded to OPERS but should retain full social security number information on their copy to ensure individuals can be identified should they request a determination at a later date.
 - In general, the individuals have five years from the date the services commenced to request a membership determination.
 - Employers are required to keep this form indefinitely and forward a copy to OPERS.
 - Employers will be responsible for producing the completed form should one of the affected individuals later seek a membership determination from OPERS for services provided to the employer.
 - If the employer is able to produce the PEDACKN and OPERS determines that the individual should have been classified as a public employee for these services, the employer's liability for payment of employer and member contributions plus interest is limited to five years.
 - If the employer is *not* able to produce the PEDACKN and OPERS determines that the individual should have been classified as a public employee for these services, the employer's liability for payment of employer and member contributions plus interest is *not* limited to five years.
 - The PEDACKN form does not need to be sent to the following individuals:
 - Students who filed an exemption
 - Fellows
 - College and university employees eligible and electing to participate in an Alternative Retirement Plan (ARP)
 - Poll workers earning less than \$500 annually
 - The PEDACKN form should be given to individuals who continue to provide the same or similar services to a contractor that they previously



provided to a public employer and for which no retirement contributions were remitted.

- The employer entity making the decision to retain these individuals is responsible for compliance regardless of whether they have a separate employer code or are consolidated under a collective employer code for purposes of retirement contribution reporting and payment
- If an employer sent the PEDREQ form to an individual because they began providing services to the public employer prior to Jan. 7, 2013, the employer will not be required to also obtain the PEDACKN form from that individual for continuing services provided after Jan. 7, 2013 unless there is a break in service provided by the individual or the individual begins providing different services under a new agreement with the employer.
- Employers are not required to obtain new PEDACKN forms for contracts or services that are renewed annually unless there is a break in service provided by the individual or the individual begins providing different services under a new agreement with the employer.

What employers need to do

Ensure compliance with the new statutory requirements by reviewing records retention policies to ensure alignment with limiting liability for prior periods of unreported service for affected individuals, and request membership determinations prior to extending contracts or hiring individuals into positions for which you do not intend to remit retirement contributions.

Employers should also consult with their legal counsel on how best to implement/comply with their statutory obligations.

Why this is important

These statutory changes were intended to limit potential employer liability for both member and employer contributions plus interest by requiring individuals to request a determination as to prior services in a timely manner. Timely requests also help to ensure that individuals receive the proper retirement system service credit, if applicable.

Changes to the *Employer Manual*

Revisions to the *Employer Manual* have been made as a result of this *Employer Notice*.

Whom to contact for more information

After you review this *Employer Notice*, contact your Employer Outreach representative with questions or comments at 888-400-0965, or by e-mail at employeroutreach@opers.org.

For a current listing of OPERS Board members, please visit www.opers.org

It is your responsibility to be certain that OPERS has your current physical and e-mail address on file. If OPERS is not made aware of address changes, we cannot guarantee that you will receive important information pertaining to OPERS public employers. This Employer Notice is written in plain language for use by public employers who are subject to coverage under the Ohio Public Employees Retirement System. It is not intended as a substitute for the federal or state law, namely the Ohio Revised Code, the Ohio Administrative Code, or the Internal Revenue Code, nor will its interpretation prevail should a conflict arise between it and the Ohio Revised Code, Ohio Administrative Code, or Internal Revenue Code. Rules governing the retirement system are subject to change periodically either by statute of the Ohio General Assembly, regulation of the Ohio Public Employees Retirement Board, or regulation of the Internal Revenue Code. If you have questions about this material, please contact our office or seek legal advice from your attorney.

