



Arizona State Retirement System

3300 North Central Avenue, Phoenix, AZ 85012

www.azasrs.gov

ASRS Guidelines

Working After Retirement

Questions?

AskMac@azasrs.gov

Phoenix (602) 240-2000

Tucson (520) 239-3100

Toll-Free (800) 621-3778

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These guidelines were developed to assist members, retirees and employers in understanding the ASRS working after retirement laws and rules. This is a guide and does not replace statutory and rule requirements. Arizona Revised Statutes, the Arizona Administrative Code along with the federal code for both the Internal Revenue Service and Section 218 of the Social Security Act, shall be the final authorities.

As a general rule, if an ASRS retiree accepts a position agreeing to work or actually does work 20 or more hours per week for 20 or more weeks in a fiscal year (or the equivalent of a half Full Time Employee) for an ASRS employer, hereinafter called 20/20, the retiree's ASRS pension will be suspended. The retiree will be required to repay his or her pension funds received after the additional work even if working 20/20 was unintentional. The member and employer will also resume contributions to the ASRS.

There are some exceptions to this general rule:

1. Retiring without terminating employment
2. Returning to work with reduced hours
3. Returning to work after 12 months
4. Returning to work and participating in another state retirement plan
5. Returning to work as a leased employee or independent contractor
6. Returning to work in a position that is not included under the employer's Social Security coverage agreement

These exceptions, including examples, are outlined below.

1. Retiring without terminating employment (A.R.S. § 38-764)(I)

Arizona law allows a member to retire, receive a pension and continue working without first terminating employment if *all* the following conditions are met:

- a) Member must have reached normal retirement (age 65, age 62 with 10 years of service, or 80 points) on or before the date of retirement.
- b) Member's work hours must be reduced below 20/20 after retirement. If the member has already worked one or more weeks of 20 or more hours in the fiscal year before retirement, those weeks will count toward the 20/20 criteria.
- c) Member's employer must agree to the reduced work hours.

The 12-month rule discussed below in Section 3 will not apply since the member has not terminated employment even though the member is working less than 20/20.

Example #1: A 52-year-old member with 28 years of service decreases his hours with his ASRS employer to 15 per week and retires without terminating employment. Twelve months after his retirement his ASRS employer offers him a 25 hour per week position. The member cannot accept the position without having his pension suspended because he has not been terminated from employment for 12 months.

Example #2: A member with 80 points decreases his hours to 19 per week and retires from the ASRS without terminating employment. The member works 19 hours per week for two years then terminates his position. Fifteen months after terminating employment the member is offered a full-time position with an ASRS employer. The member can accept this position without a pension suspension since he is at least 12 months beyond his termination of employment, assuming the other requirements of A.R.S. § 38-766.01 are met. (See Section 3 below: Returning to work after 12 months.)

2. Returning to work with reduced hours (A.R.S. § 38-766)

Arizona law allows all retirees who have terminated employment to return to work less than 20/20 after retirement without a suspension of pension. However, a retiree's pension will be suspended if he or she meets any of the following conditions:

- a) Member did not reduce hours below 20/20.
- b) Member worked 20/20 prior to retirement then, after retirement but in the same fiscal year, agrees to or does work even one more 20 hour week; or
- c) Member worked some 20 or more hour weeks prior to retirement and then, after retirement but in the same fiscal year, agrees to or does work additional 20 hour weeks so that the total weeks of at least 20 hours worked before and after retirement equals or exceeds 20; or
- d) Member works 20/20 in any fiscal year after retirement. (See the exception below in Section 3, Returning to work after 12 months, for members who meet *all* the conditions of A.R.S. § 38-766.01.)

Example #1: A member retires with ASRS on January 1, having already worked 26 full-time weeks during the fiscal year. The member returns to work in April in a temporary position and works 20 or more hours that first week. The member's ASRS pension will be suspended because the member has already met the 20/20 criteria for membership in that fiscal year.

Example #2: A member retires with ASRS on September 7, already having worked 10 full-time weeks during the fiscal year. The member returns to work in January and works 9 weeks of 20 or more hours per week and 17 weeks of less than 20 hours in the remainder of the fiscal year. The member's pension will not be suspended because the member only worked 19 weeks of at least 20 hours in the fiscal year.

Example #3: A member retires with ASRS on September 7, already having worked 10 full-time weeks during the fiscal year. In May, with only 9 weeks remaining in the fiscal year, the member returns to work after accepting a 20 or more hour per week position that will continue into the next fiscal year, under circumstances under which a non-retired member would be required to contribute. Even though the member will not have worked 20/20 in that fiscal year the member's pension will be suspended immediately. The suspension is required because the member has now become engaged to work at least 20 weeks of at least 20 hours, the same as a new employee. There is no exception, even if the employer labels the job as temporary, interim, probationary or any other similar job description.

3. Returning to work after 12 months (A.R.S. § 38-766.01)

The 12-month rule allows members who meet *all* of the following conditions to return to work full time without a suspension of pension:

- a) Member must have either retired at normal retirement age or at least reached normal retirement age prior to returning to work.
- b) A termination of employment is required.
- c) Member must wait 12 months from date of termination to return to work (not from retirement date).
- d) During the 12-month wait the member cannot meet 20/20 criteria for active membership:
 1. If the member has already worked one or more weeks of 20 or more hours in the fiscal year before retirement, those weeks will count toward the 20/20 criteria.

2. Member cannot work any 20 or more hour weeks in the same fiscal year after termination if already worked 20/20 before termination of employment.
 3. Member cannot take an ongoing 20 or more hour per week job that starts before the 12 months have expired.
- e) Member must sign a statement acknowledging all these conditions, including no further ASRS contributions, no LTD eligibility and no additional service credit. This statement must be signed and filed with the employer within 30 days of returning to work.
 - f) Members retired from being a certified teacher must return without tenure.
 - g) The decision to return to work without a suspension is irrevocable for the remainder of the employment period.

Example #1: *A member at age 62 terminates employment and retires with 20 years of service. He receives a job offer 8 months later to work full-time on an ongoing basis. There are fewer than 20 weeks left before his 12-month termination anniversary. He cannot accept this position without a pension suspension until the full 12-month period has expired from the date of termination. This is the result even if the new employer offers to label the job as a temporary position for the first 5 or 6 months, and has no written promises that it will transition to a permanent position.*

Example #2: *A member terminates employment and retires with 80 points in May. In August she signs a new contract to work 19.5 hours per week. One month later, she signs a supplement to work an extra five hours per week for 12 weeks. When that expires, she submits time sheets that show she worked an additional 4 hours per week for 4 weeks. After that, she signs another supplement to work an additional 6 hours per week for 10 weeks. Her pension will be suspended at this point because, upon signing the 6 hour/10 week supplemental agreement, she will have agreed to work enough 20 hour weeks when added to the weeks already worked to meet the 20/20 criteria for membership.*

Example #3: *A member at age 50 with 9 years of service elects to terminate employment and take early retirement. After 12 months he investigates whether he can return to work full-time without suspension of his pension. He is not eligible because he has not yet reached normal retirement age.*

Example #4: *A member at age 61 with 18 years of service elects to terminate employment and retire. After 12 months she investigates whether she can return to work full-time without suspension of pension. She is eligible because she is now at normal retirement. Her age plus service has reached 80 points, and she has also reached age 62 with at least 10 years of service. She has been terminated 12 months and, as long as she meets the other requirements, she may return to work for an ASRS employer in a 20/20 position without suspending her pension and resuming active contributions.*

4. Returning to work and participating in another state retirement plan (A.R.S. § 38-727)

If a member terminates employment and retires the member may return to work in a 20/20 position without a suspension of pension benefits if that position satisfies all of the following:

- a) Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement
- b) Does not require participation in the ASRS
- c) Either:
 1. Requires participation in another state retirement system and the member makes those contributions unless coverage is waived by an individual eligible for the Elected Officials Retirement Plan, or
 2. Permits a member to participate in another state retirement system and the member makes that election.

Example #1: *A member terminates employment, retires with the ASRS, and goes to work within 12 months for a different employer in a position that participates in the Corrections Officer Retirement Plan. The member's ASRS pension will not be suspended.*

Example #2: A member terminates employment as a high school teacher, retires with the ASRS, goes to work within 12 months for a university in a professor position that has an optional retirement plan and the retiree elects to participate in that optional plan. Since the member has taken a position that is a true change in position, duties and title and the member has elected to participate in the University Optional Retirement Plan, the member's ASRS pension will not be suspended.

Example #3: A member, without terminating employment, attempts to retire with the ASRS by transferring into a new position with the same employer. The new position meets the 20/20 criteria for membership but requires participation in the Public Safety Personnel Retirement System. The member ceases making contributions to the ASRS but cannot retire from the ASRS since the member has not terminated employment.

5. Returning to work as a leased employee (A.R.S. § 38-711) or an independent contractor

Arizona law allows a member to terminate employment, retire from the ASRS and return immediately as a leased employee or an independent contractor without a suspension of pension. However, these individuals may be considered to be "employees" by the IRS, the Social Security Administration, or another governmental authority, and could face a suspension of pension if that determination were made.

Example #1: A member terminates employment, retires with the ASRS, and immediately returns to the same position but works for a third party leasing company and not directly for the ASRS employer. This member's pension may be suspended if it is determined the member is working as an "employee" for IRS or Social Security purposes.

Example #2: A member terminates employment, retires with the ASRS and then sets up a limited liability corporation to be his employer. After six months the LLC leases the retiree to an ASRS employer as an "independent consultant." This member's pension could be suspended because the retiree might not satisfy the IRS definition of an independent contractor. A member considering independent contracting should consult with his or her employer and the IRS before taking this step.

6. Returning to work in a position that is not included under the employer's Social Security coverage agreement (A.R.S. § 38-727)

ASRS employers have signed an agreement for employee coverage under Social Security (commonly referred to as a Section 218 agreement). Depending on the agreement, certain positions are excluded under Social Security (e.g., police officers, firefighters, elected officials and students are frequently not covered). A member working in a position that is excluded from the Social Security agreement is not eligible for participation in the ASRS. Retirees who return to work after termination of employment, but in one of these excluded positions, will continue to be eligible to receive a pension regardless of the number of weeks and hours worked and regardless of whether the member is at a normal retirement age or is an early retiree.

Example #1: A member terminates from ASRS employment and then retires. After six months, the retiree accepts a position as a police officer which is not covered by the employer's Section 218 agreement. The retiree can continue in this position indefinitely, working any number of hours, without suspension of his ASRS pension because this position is not covered by the employer's Section 218 agreement.

Example #2: An ASRS member at age 50 with 7 years of service decides to terminate and take early retirement to return to college. Fourteen months later she is hired to work on an ongoing basis for 4 hours per day, 20 hours per week, by a high school district that does not cover its students in its Section 218 agreement. However, her pension will be suspended because she is not a student of that employer and, as an early retiree she is not eligible for the 12-month return to work exception.

Example #3: An ASRS member terminates employment and retires from a school district. She then decides to run for an elected position on the school board. She is elected to this position 4 months after termination. Because the school exempts elected officials from its Section 218 agreement, the member can work any number of hours without a suspension of her ASRS pension.