

Return to Work Frequently Asked Questions

1. Which TRSL retirees are eligible to return to work in a TRSL-covered position without a benefit suspension after the applicable 12- or 36-month waiting period has elapsed?

In order for a TRSL retiree to return to work without a benefit suspension, the retiree must meet the definition of "retired teacher" (note that the benefits of "retired teachers" are suspended if they return to work within the waiting period). The categories of "retired teacher" are as follows:

- **Re-employment eligible retiree:**
 - » Member who retired on or before June 30, 2010 (grandfather group)
 - » Retiree who holds an advanced degree in speech therapy, speech pathology, or audiology
- **Re-employment eligible, critical shortage position:**
 - » Full- or part-time PreK-12 "classroom teacher" in a declared critical shortage area
 - » A retiree who returns to work as a full-time certified speech therapist, speech pathologist, audiologist, school counselor, school social worker, educational diagnostician, school psychologist, interpreter, educational transliterator, or educator of the deaf or hard of hearing in a school district where a shortage exists (the position of employment must require a valid Louisiana ancillary certificate approved and issued by the Louisiana Department of Education)
- **Re-employment eligible position (25% earnings limit):**
 - » Substitute PreK-12 "classroom teacher"
 - » Adult education or literacy program teacher
 - » Adjunct professor (as defined in return-to-work law)
 - » School nurse, as defined in La. R.S. 17:28
 - » Presenter of professional development training
 - » Tutor for any PreK-12 student
 - » "Classroom teacher" employed in a temporary capacity to proctor tests

2. What restrictions and requirements are placed on "retired teachers" returning to work in a TRSL-covered position and their employers?

A retiree meeting the definition of "retired teacher" and returning to work with a TRSL-covered employer within the applicable 12- or 36-month waiting period, immediately following the effective date of retirement will have his or her retirement benefits suspended for the duration of such active service or the lapse of the waiting period (12 or 36 months from the effective date of his or her retirement), whichever occurs first. This includes employment by contract or corporate contract.

Following the conclusion of the applicable waiting period, a return-to-work retiree considered a "retired teacher" will receive his or her retirement benefit based upon the applicable provision under which the retiree has returned to work.

"Retired teachers" are required to make unsheltered contributions and employers are required to make employer contributions. No additional service credit is accrued nor is any additional benefit earned. "Retired teachers," upon application, are eligible to receive a refund of employee contributions upon termination from active service. See questions below and Index 15.0 of the *Employer Procedures Manual* for additional employer requirements.

3. Which retirees are subject to a 12-month waiting period and which retirees are subject to a 36-month waiting period?

- **Retirees subject to a 12-month waiting period include:**

- » Individuals who retired before July 1, 2017
- » Individuals who retired on or after July 1, 2017 and who hold an advanced degree in speech therapy, speech pathology, or audiology
- » Individuals who retired on or after July 1, 2017 and whose retirement benefit **was not** actuarially reduced or **was not** calculated at an accrual rate of less than 2.5%

- **Retirees subject to a 36-month waiting period include:**

- » Individuals who retired on or after July 1, 2017 and whose retirement benefit **was** actuarially reduced or **was** calculated at an accrual rate of less than 2.5%
- » Plan B members who retired on or after July 1, 2017

4. How are retirees not classified as “retired teachers” affected?

Retirees returning to work as an employee in a TRSL-covered position who do not fall within the definition of “retired teacher” are considered “retired members” under the TRSL return-to-work law. A “retired member” will have his or her benefit suspended for the duration of re-employment.

A retiree may be considered a “retired member” even if he or she is re-employed by a TRSL-covered employer by contract or corporate contract. A “retired member” and his or her employer are not required to make contributions to TRSL during re-employment and do not accrue any additional service credit or benefits.

5. Are retirees performing services under a contract or corporate contract covered by the TRSL return-to-work law?

The TRSL return-to-work law applies to employment by contract or corporate contract with respect to the employment of “retired teachers” and “retired members.” Each employer’s determination of whether a retiree is a “retired teacher” or “retired member” should occur without regard to whether the retiree is performing a service as a direct employee or as a contractor.

Therefore, a retiree is subject to TRSL’s return-to work laws when they (1) enter into an independent contract with a TRSL-covered employer; or (2) are employed by a separate entity to perform services for a TRSL-covered employer (employment by corporate contract).

The retiree will be classified as a “retired teacher” or “retired member” and subject to a 12- or 36-month waiting period (applicable to “retired teachers”) or benefit suspension for duration of re-employment (applicable to “retired members”).

6. Does the TRSL return-to-work law prevent a TRSL employer from hiring a TRSL retiree who is a “retired teacher” within his or her waiting period or from hiring an individual who is a “retired member?”

The TRSL return-to-work law does not prohibit or prevent an employer from employing any TRSL retiree. The law regulates the receipt of retirement benefits when a TRSL retiree returns to work; it does not regulate the employment of retirees.

See question 17 with respect to the hiring of retirees for full-time critical shortage positions when there are three or more certified applicants, one of whom is not a retiree.

7. Which retirees are considered “retired teachers” as a result of being in the “grandfathered” group?

All TRSL retirees who retired on or before June 30, 2010 are considered “retired teachers” in the “re-employment eligible retiree” category. These retirees may be re-employed by a TRSL employer without a suspension of their retirement benefits. Employee and employer contributions must be paid during re-employment.

8. What grade levels are included in the definition of “retired teacher” with respect to being a “classroom teacher” in a critical shortage area? Is pre-kindergarten included?

In 2018, the TRSL return-to-work law was amended to include pre-kindergarten in the “retired teacher” category of “re-employment eligible critical shortage position” as a full- or part-time “classroom teacher.”

9. Who is considered a “classroom teacher” under the TRSL return-to-work law?

- The law defines a “classroom teacher” as any employee:
 - » whose position of employment requires a valid Louisiana teaching certificate; and
 - » who is assigned the professional activities of instructing pupils in courses in classroom situations for which daily pupil attendance figures for the school system are kept.

Remember that the definition of “classroom teacher” only relates to individuals attempting to meet the definition of “retired teacher” related to a critical shortage or a substitute.

10. Who is included in the “classroom teacher” definition with respect to “instructing pupils in courses in classroom situations for which daily pupil attendance figures for the school system are kept?”

The law defines “classroom situations” as including “teaching in a school classroom or in other settings such as a home or hospital or other learning situations such as co-curricular activities, which instruction may be provided in person or through an approved medium such as television, radio, computer, internet, multimedia, telephone, and correspondence that is delivered inside or outside the classroom or in other teacher-student settings.” Examples of “classroom teachers” include:

- Teachers in traditional PreK-12 classroom settings in which a teacher maintains records of student attendance, i.e. a teacher assigned a class(es) to perform instructional activities for a designated number of students in a designated subject area or grade, as established for the school year or course length.
- Teachers providing instruction to students in PreK-12 instructional settings during a regular school day whereby:
 1. the services provided to the child are a component of the child’s instruction in a subject area(s); &
 2. there is an attendance record maintained with respect to the child by the teacher providing the instruction or by a teacher to whom the child is primarily assigned for the subject area or grade, if the instructional services provided are supplemental to the course work of the primary assignment. For example, for children needing assistance under the Individuals with Disabilities Education Act (IDEA), an interventionist or resource teacher may provide instruction which supplements instruction provided in the primary subject area assignment.
 - » Teachers providing distance learning via the internet or other means, if the teachers are maintaining records of daily attendance for the school system.
 - » Teachers providing instruction to homebound students, if the teachers are maintaining records of daily attendance for the school system.

11. Can a principal, other school administrator, or central office staff member (“administrator”) be considered a “retired teacher” under the TRSL return-to-work law?

TRSL retirees who retired on or before June 30, 2010, (“grandfathered” group) are considered “retired teachers,” regardless of the position they are filling. Therefore, such “retired teachers” can be administrators.

In addition, “retired teacher” includes retirees who hold an advanced degree in speech therapy, speech pathology, or audiology. The TRSL return-to-work law does not require such retirees to be employed in a speech-related position. As a result, a retiree with one of these advanced degrees could fill an administrator position and be considered a “retired teacher.”

12. What is a critical shortage?

For PreK-12 “classroom teachers,” a critical shortage is any situation in which the employer has advertised and posted notice of positions to be filled and has received fewer than three qualified applicants. A specific subject area or grade level(s), if elementary, must be identified when declaring a critical shortage.

A critical shortage may also exist when there is a shortage of certified speech therapists, speech pathologists, audiologists, educational diagnosticians, school social workers, school counselors, school psychologists, interpreters, educational transliterators, or educators of the deaf or hard of hearing.

13. What are the requirements for declaring and certifying a critical shortage?

See *Step-by-Step: Declaring a Critical Shortage and Certifying Positions* in Index 15.0 of the *Employer Procedures Manual*.

14. When advertising and posting a job notice for a full-time critical shortage position, is there a specific time frame the advertisement/notice must be run/posted?

The TRSL return-to-work law requires the following:

- Prior to making a critical shortage certification for any full-time critical shortage position, “the employer shall cause to be advertised in the official journal of the employer’s governing authority, on two separate occasions, notice that a shortage of certified teachers exists and the positions sought to be filled.
- Additionally, the employer shall cause notice to be posted at the career development office, or similar such entity, of every post-secondary institution within a one hundred twenty-mile radius of the employer’s governing authority.”
- Further, “[i]f a certified applicant who is not a retiree applies for an advertised position, such person shall be hired before any certified retiree is employed, unless fewer than three applicants have applied for the position each of whom is certified in the critical shortage area being filled.”

The purpose of the steps in these provisions is to determine, prior to employing a retiree, whether there are non-retired, certified applicants available to fill the position. To that end, the advertisement/posting should be for the position to be filled and should be completed within a timeframe that is reasonably close to when the position will be filled. When an advertisement is not reasonably close in time to the filling of the position, there is no clear way to certify that a critical shortage exists (i.e. there are insufficient non-retiree applicants).

Because each situation will differ, there is no a specific number of months required to determine what is reasonably close in time. However, the overarching factor is whether sufficient efforts have been made to fill the position with a certified, non-retiree applicant. Below are two examples to assist in making this determination.

EXAMPLE 1: School District A advertises/posts for a high school math teacher in May of 2017 for a position to be filled for the beginning of the 2017-18 school year. If all criteria are met and the position is filled at the beginning of the 2017-18 school year, School District A can use the May 2017 advertisement/posting as its basis for declaring a critical shortage, because:

1. It was intended for the position to be filled; and
2. It was within a timeframe that is reasonably close to the position being filled and when such advertisements would typically be run.

EXAMPLE 2: School District B advertises/posts for a high school math teacher in May of 2017 for a position to be filled for the beginning of the 2017-18 school year. In March of 2018, a vacancy in a high school math position occurs and needs to be filled. School District B cannot use the May 2017 advertisement as its basis for declaring a critical shortage, because:

1. It was not intended for the position to be filled in March 2018 (Rather, it was meant for a position open at the beginning of the school year); and
2. It was not within a timeframe that is reasonably close to the position being filled.
 - » School District B, in this case, must reaffirm, as applicable, through advertisement/posting that there is not a sufficient number of non-retiree, certified applicants available to fill the position.
 - » In general, if the last search was many months prior to the position being filled (like 10 months in Example 2), it is difficult to certify that a critical shortage exists. Within those 10 months, existing teachers may have become available; additionally, there would be two more graduating classes of teachers entering the workforce prior to March of 2018.

15. Does an employer have to advertise prior to declaring a critical shortage for a part-time position?

No, the TRSL return-to-work law only requires advertising for full-time positions. Please remember that the only part-time critical shortage position considered a “retired teacher” is a part-time critical shortage “classroom teacher” position. Other critical shortage positions (speech therapists, speech pathologists, audiologists, educational diagnosticians, school social workers, school counselors, school psychologists, interpreter, educational transliterator, or educator of the deaf or hard of hearing) must be full-time to meet the “retired teacher” definition.

16. Does advertising on Teach Louisiana (www.teachlouisiana.net) satisfy the requirement for critical shortage declarations of advertising in the official journal of the employer’s governing authority?

No, the advertisement must be in the official journal. Teach Louisiana can still be used as a supplemental advertising source, but does not meet the requirements of the return-to-work law.

17. Post-secondary institutions

- **For critical shortage declarations, does the requirement to post a job notice at the career development office of every post-secondary institution within a 120-mile radius of the employer’s governing authority include institutions in neighboring states?**
 - » Yes, the return-to-work law states that notice must be posted at “every post-secondary institution.” As a result, if the 120-mile radius extends into other states, notice must be posted at out-of-state institutions within that radius.
- **Does the notice have to be posted at public and private institutions?**
 - » Yes, the return-to-work law doesn’t qualify the types of post-secondary institutions. As a result, “every post-secondary institution” includes public and private institutions within the 120-mile radius.

18. Is there a situation in which I would be prevented from hiring a retiree?

The TRSL return-to-work law does not prevent a school system from hiring a retiree. It only places restrictions on the hiring of a retiree in a critical shortage area, if a certified applicant who is not a retiree applies for an advertised position. Under the TRSL return-to-work law, a certified applicant who is not a retiree must be hired before any certified "retired teacher" is employed, unless fewer than three teachers have applied for the position, each of whom are certified in the critical shortage area being filled.

19. Does a retiree have to be certified in the critical shortage area?

Retirees filling a full-time position in a critical shortage area must be certified in the critical shortage area. The TRSL return-to-work law, with respect to filling a position with a retiree when there are fewer than three applicants, requires that all applicants are certified in the critical shortage area.

The same requirements do not apply to part-time positions; therefore, retirees filling part-time positions in critical shortage areas (PreK-12 "classroom teachers") do not have to be certified in the area.

However, because the part-time position requires a teaching certificate in order to be considered a "classroom teacher," the retiree filling a part-time critical shortage position must be certified in some area, if not in the area he or she is teaching.

Please note that the certification requirements referenced herein only relate to the requirements set forth in the TRSL return-to-work law.

20. What types of employment are considered part-time employment with respect to "classroom teachers?"

For the purposes of the TRSL return-to-work law, TRSL considers part-time to include the following:

- Working 20 hours or less per week
- Filling a position temporarily vacated by a full-time employee
- Working on a special project or program that is temporary or short term

21. Can a part-time speech therapist, speech pathologist, audiologist, educational diagnostician, school social worker, school counselor, school psychologist, interpreter, educational transliterator, or educator of the deaf or hard of hearing be considered a "retired teacher" under the critical shortage provision of the return-to-work law?

No. While the definition of "retired teacher" includes full-time or part-time "classroom teachers" in critical shortage areas, with respect to other critical shortage positions, the law specifically requires the position to be full-time.

22. Who does the 25% earnings limit in the "retired teacher" category apply to?

- Retirees who are re-employed as substitute pre-K-12 "classroom teachers;"
- Retirees who are re-employed as instructors for adults through an adult education or literacy program administered through a public institution of elementary and secondary education;
- Retirees who are re-employed as adjunct professors, as defined in the return-to-work law;
- Retirees who are re-employed as school nurses, as provided in La. R.S. 17:28;
- Retirees who are re-employed as presenters of professional development training;
- Retirees who are re-employed as tutors for any PreK-12 student; or
- Retirees who are re-employed as "classroom teachers" employed in a temporary capacity to proctor tests.

23. When can a TRSL retiree be considered a “substitute classroom teacher” as set forth in the earnings limit provision of TRSL’s return-to-work law?

A TRSL retiree can be considered a “substitute classroom teacher” if a TRSL employer has a distinct substitute teaching position that meets the definition of “classroom teacher” or if the position that the retiree is temporarily filling meets the definition of “classroom teacher.”

“Substitute classroom teacher” is defined as any classroom teacher employed in a temporary capacity to fill the position of another classroom teacher who is unavailable to teach for any reason. Thus, it is imperative that the TRSL retiree be a classroom teacher replacing another classroom teacher.

If a retired classroom teacher returns to work on a part-time or temporary basis without replacing another classroom teacher, the “substitute classroom teacher” criteria will not be satisfied. Employers of such individuals should instead consider whether such position qualifies as a part-time critical shortage position.

24.

• **Who is considered an “adjunct professor” under the return-to-work law? Can a university use its definition of adjunct professor to determine if a retiree can be considered a “retired teacher?”**

- » The return-to-work law sets forth a specific definition for “adjunct professor,” as follows:
- » “Adjunct professor” means any part-time faculty, including any instructor, assistant professor, associate professor, or professor, assigned the professional activities of instructing pupils or conducting research at a public institution of post-secondary education. Instruction may be provided in person or through an approved medium such as television, radio, computer, internet, multimedia, telephone, or correspondence and may be delivered inside or outside the classroom or in other teacher-student settings.

• **What is considered “part-time” for post-secondary educational institutions with respect to adjunct professors and the return-to-work law?**

- » State law directs that TRSL utilize federal regulation in determinations regarding an individual’s part-time status. Specifically, the applicable federal regulation is 26 CFR 31:3121(b)(7)-2, and provides as follows with respect to teaching faculty:
- » “A teacher employed by a post-secondary educational institution (e.g., a community or junior college, post-secondary vocational school, college, university or graduate school) is not considered a part-time employee for purposes of this section if he or she normally has classroom hours of one-half or more of the number of classroom hours designated by the educational institution as constituting full-time employment, provided that such designation is reasonable under all the facts and circumstances.” This federal regulation also provides the following example:

EXAMPLE: A community college treats a teacher as a full-time employee if the teacher is assigned to work 15 classroom hours per week. A new teacher is assigned to work 8 classroom hours per week. Because the assigned classroom hours of the teacher are at least one-half of the school’s definition of full-time teacher, the teacher is not a part-time employee.

• **How do you apply the “part-time” definition to faculty performing research and who do not have classroom hours?**

The portion of the federal regulation cited above applies to post-secondary educational institution employees who are serving as teachers. The return-to-work law includes in the definition of “adjunct professor,” faculty “conducting research at a public institution of post-secondary education.”

For TRSL retirees otherwise meeting the definition of “adjunct professor” as a result of their research duties, the general part-time definition in the federal regulation (26 CFR 31:3121(b)(7)-2) will apply. This provision defines part-time as follows: “a part-time employee is any employee who normally works 20 hours or less per week.”

NOTE: While a university may use its own definition of adjunct professor for various purposes, when determining if a TRSL retiree is an “adjunct professor” for the purpose of the return-to-work law, the definition set forth in that law (provided in question 23.a above) must be applied.

25. The positions qualifying as a “retired teacher” in the return-to-work include “school nurse,” which is defined as the position provided for in La. R.S. 17:28? What is required by La. R.S. 17:28?

La. R.S. 17:28 (A) provides:

Each city and parish school system shall employ at least one school nurse certified by the State Board of Elementary and Secondary Education but shall not exceed a statewide average of one certified school nurse for each one thousand five hundred students. Each certified school nurse shall be responsible for performing such health care services as may be required by state law, guidelines established by the Department of Education, or both, provided these services comply with the rules and regulations as established by the Louisiana State Board of Nursing. The school nurse program shall be funded through the state general fund and included within the budget of the Department of Education, office of academic programs, bureau of student services.

26. The positions qualifying as a “retired teacher” in the return-to-work include a position for “tutor” for any student in pre-K through 12th grade. What qualifies as ‘tutoring’?

There is no definition of ‘tutor’ in the return-to-work law. In common usage, the term ‘tutor’ generally means a person charged with the instruction and guidance of an individual or a very small group.

27. The positions qualifying as a “retired teacher” in the return-to-work include a position for for a classroom teacher employed in a temporary capacity to proctor tests. Does the proctor have to be filling in for a “classroom teacher”? What other requirements must the proctor meet?

The proctoring position is a stand-alone “retired teacher” classification, which unlike the “substitute classroom teacher” classification, **does not** require the retiree to be filling in for or temporarily replacing another “classroom teacher”.

With regard to proctoring, the definition of “classroom teacher” in the return-to-work law provides that an individual must be assigned to proctor admission, evaluation, or assessment testing. Furthermore, the proctoring position must require a valid Louisiana teaching certificate. Note that proctoring is not an eligible “critical shortage” position.

28. Does the earnings limit provision apply to retirees who hold advanced degrees in speech therapy, speech pathology, or audiology?

No, the earnings limitation does not apply to retirees who hold advanced degrees in speech therapy, speech pathology, or audiology. Employer certification is required for this group—refer to the *Employer Procedures Manual*, Index 15 for detailed instructions.

29. What are the earning limitations for eligible retirees?

For retirees who are “retired teachers” under the “re-employment eligible position” provisions of the return-to-work law, the law restricts earnings in a fiscal year (July 1 – June 30) to no more than 25% of the retiree’s annual benefit.

For example, if a retiree’s annual benefit is \$40,000 per year, his or her earnings limit would be \$10,000. If the retiree’s earnings in a fiscal year exceed \$10,000, his or her benefit would be reduced by the amount of earnings over \$10,000.

30. Can a retiree be re-employed in more than one position that is subject to the 25% earnings limit in any fiscal year?

Yes, a retiree can hold more than one earnings limit position as it relates to TRSL’s return-to-work law, but the earnings limit applies to the total earnings for all such eligible positions in the fiscal year.

For example, the earnings of a retiree who is a substitute teacher for a school district and an adjunct professor for a university will be combined for the purposes of the earnings limitation. If the retiree is employed by multiple employers, each employer must enroll the retiree and report monthly salary and contributions.

31. What penalties may an employer be subject to for failing to enroll a return-to-work retiree?

The return-to-work law requires employers to enroll re-employed retirees within 30 days of employment. If an employer fails to do so and a benefit payment is made that should have been suspended but for the lack of enrollment (e.g., the retiree would have been enrolled as a “retired member”), the employer will be liable for the repayment of any amounts paid to a retiree. For example, if School Board A employs Retiree Z, who is a “retired member,” and fails to enroll Retiree Z in TRSL for six months following re-employment, Retiree Z will continue to receive retirement benefits during the six-month period. School Board A will therefore be liable to TRSL for the payment of the six months of retirement benefits paid to Retiree Z.

32. Are retirees returning to work at a charter school subject to TRSL’s return-to-work law?

Pursuant to charter school law, each charter school may elect to participate in TRSL (“Participating Charter School”) or to not participate in TRSL (“Non-participating Charter School”). The TRSL return-to-work law applies to Participating Charter Schools; therefore, a retiree returning to work at a Participating Charter School is subject to all provisions governing return to work, just as though he or she had returned to work at a traditional public school. Such retirees must qualify as a “retired teacher” in order to not be subject to a benefit suspension upon his or her return to active service.

Non-participating Charter Schools are not subject to TRSL laws, including the return-to-work law; therefore, a retiree returning to work at a Non-participating Charter School is not subject to the return-to-work provisions in the law. Such retirees may return to work at a Non-participating Charter School without being subject to a suspension of his or her TRSL retirement benefits.

NOTE: Pursuant to La. Atty. Gen. Op. No. 11-0257, applicable constitutional and statutory law does not grant charter schools the authority to modify the teachers’ retirement and benefit plan selected in its approved charter during the charter school’s operation. As a result of this opinion, charter schools that have attempted to withdraw from TRSL are considered “Participating Charter Schools.”

33. Do the benefit suspension provisions in the TRSL return-to-work law apply to all TRSL retirees?

The benefit suspension provisions in the TRSL return-to-work law apply to all retirees, except any retiree hired by the Louisiana Association of Educators (LAE), whose employment prior to retirement was not subject to a collective bargaining agreement. La. R.S. 11:701(33)(v)(cc) specifically provides that such retirees shall not be subject to a benefit reduction or suspension. Any retiree hired by LAE who was covered by a collective bargaining agreement when he or she retired is subject to all of the provision of the TRSL return-to-work law, including benefit suspension provisions.

34. As an employer, what steps should I take when hiring a TRSL retiree?

Refer to Index 15 of the *Employer Procedures Manual*, including all materials that supplement Index 15.

35. Can a return-to-work (RTW) employee join the ORP?

A retiree may elect to join ORP if they were never previously offered the opportunity through prior employment as an unclassified employee with a university, college, or community college, or other constitutionally established boards that manage institutions of higher education. However, the retiree will still be subject to the TRSL return-to-work laws. A retiree categorized as a "retired teacher" must contribute to both TRSL Regular Plan and the ORP, having 8.0% coming in for TRSL Unsheltered and 8.0% for ORP. The employer will have to pay the employer contribution rate for both plans. A retiree categorized as a "retired member" will only contribute to the ORP; however, their monthly TRSL benefit will still be suspended for the duration of re-employment.

**NOTE* The retiree will be considered both a TRSL retiree and an ORP participant for all future TRSL eligible employment, whether Higher Ed or K-12.*