

RETIREMENT PROGRAMS

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(LEGAL)

An employer, including a college district, shall not require the retirement of any employee on the basis of age. *29 U.S.C. 623; Education Code 51.922*

Teacher Retirement System

Membership in the Teacher Retirement System of Texas (TRS) includes all employees of the public school system, such as college district employees. Membership in the retirement system may only be established through employment with a single employer on at least a half-time basis. *Gov't Code 822.001; Atty. Gen. Op. H-871 (1976)*

Participation in TRS is subject to Government Code Chapters 822-825 and 34 Administrative Code Part 3.

Exceptions

An employee of the public school system is not permitted to be a member of the retirement system if the employee:

1. Is eligible and elects to participate in the optional retirement program under Government Code Chapter 830, below; or
2. Has retired under the retirement system and has not been reinstated to membership pursuant to Government Code 824.005 or 824.307.

An employee of a public institution of higher education who is required to be enrolled as a student in the institution as a condition of employment is not permitted to be a member of the retirement system based on that student employment, and compensation paid to the employee for work performed as a student employee is not compensation subject to report and deduction for member contributions or to credit in benefit computations under Government Code 822.201.

Gov't Code 822.002

Optional Retirement Program

The governing board of each institution of higher education, including each college district, shall provide an opportunity to participate in the optional retirement program (ORP) to all faculty members in the component institutions governed by the board. Eligibility to participate in the optional retirement program is subject to rules adopted by the Coordinating Board, 19 Administrative Code 25.1–25.6. *Gov't Code 830.101(a)–(b); 19 TAC 25.4(e)*

“Faculty member” means a person who is employed by an institution of higher education, including a college district, on a full-time basis in any of the following positions:

1. A member of the faculty whose duties include teaching or research.

2. An administrator responsible for teaching and research faculty.
3. An athletic coach, associate athletic coach, or assistant athletic coach whose primary activity is coaching.
4. A professional librarian, a president, a chancellor, a vice president, a vice chancellor, or other professional staff person whose national mobility requirements are similar to those of faculty members and who fills a position that is subject to nationwide searches in the academic community.

Gov't Code 821.001

An employee who meets the eligibility criteria in 19 Administrative Code 25.4(a) shall be provided an ORP election period, as defined in 19 Administrative Code 25.3, during which an election to participate in ORP may be made by signing the TRS 28 ORP election form (or its successor) or, for employees of the board, the ORP election form provided by the board, and submitting the ORP election form to the ORP employer for certification. An employee's initial ORP eligibility date shall be the first date that the employee meets all four criteria in 19 Administrative Code 25.4(a). The 90-day ORP election period shall begin on an employee's initial ORP eligibility date and shall end on the earlier of the date the employee makes an ORP election by signing the TRS 28 ORP election form (or its successor) or, for employees of the board, the ORP election form provided by the board, and submitting the ORP election form to the ORP employer for certification; or the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first business day after the 90th calendar day.

An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked. Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in the applicable retirement system.

19 TAC 25.3(7), (11), .4(f); Atty. Gen. Op. H-1184 (1978)

Each ORP employer shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local

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procedures for submitting the election form and additional required paperwork. *19 TAC 25.4(f)(2)*

Failure to Notify

If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the ORP employer shall notify the eligible employee as soon as the oversight is discovered.

An employee who becomes eligible to participate in ORP and is notified by the ORP employer of the opportunity to participate in the program after the first day and before the 91st day after the date the employee becomes eligible must elect to participate in the program before the later of the 91st day after the date the employee becomes eligible or the 31st day after the date the employee receives notice of the opportunity to participate in the program.

An employee who becomes eligible to participate in ORP and is notified by the ORP employer of the opportunity to participate in the program on or after the 91st day after the date the employee becomes eligible must be notified by the employer before the 151st day after the date the employee becomes eligible. The employee must elect to participate in the program before the later of the 151st day after the date the employee becomes eligible or the 31st day after the date the employee receives notice of the opportunity to participate in the program.

19 TAC 25.4(o)

**Governmental
Excess Benefit
Arrangement**

An institution of higher education, including a college district, may establish a governmental excess benefit arrangement as provided by Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)) for the purpose of providing to participants in the optional retirement program any portion of a participant's benefits that would otherwise be payable under the terms of the program except for the limitation on benefits imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415). The governing board of an institution of higher education may take any action necessary to establish and implement a governmental excess benefit arrangement authorized in accordance with Government Code 830.004(c). *Gov't Code 830.004(c)*