

Guide to Retirement & Reemployment

Provisions for Employers and Employees

**South Dakota
Retirement System**



November 2005

Revised May 2008
April 2009
March 2011

Effective April 1, 2010

This document is designed to provide SDRS members with the general provisions of law that define when a member can retire, and what requirements pertain to being reemployed by the same employer or with another participating employer of the South Dakota Retirement System. For your convenience, this document is designed as though a member is asking retirement questions.

It is important to note that all retirements are subject to SDRS audit and that SDRS may request certification from the employer to verify that all provisions of a member's termination from employment and all provisions of the rehiring process were concluded as prescribed by law. Employer certification(s) must be signed by the chairman of the governing board, commission, or other hiring authority that is responsible for the termination and employment of the employee.

Failure to adhere to the provisions of law and/or any false representation by the employee or the employer are subject to the consequences of law regarding invalidation of the retirement status, repayment of all benefits paid, plus interest, and the laws of perjury.

Question #1: When can I retire?

You may retire ten (10) years prior to normal retirement age if you have at least three years of contributory service. Normal retirement age is age 65 for Class A and Class B Judicial members and age 55 for Class B Public Safety members. Your age and credited years of service will determine the type of benefit that will be computed - a normal or special early retirement benefit, or an early reduced benefit. By law your employment must be completely terminated, including the full and complete payout of all termination pay and benefits prior to being eligible to receive a retirement benefit from SDRS.

Question #2: When can my SDRS retirement benefit start?

South Dakota Codified Law (SDCL) 3-12-90 is the law that pertains to when retirement benefits can start on early or normal retirement.

§3-12-90. Commencement of benefits on early or normal retirement--Termination of benefits-- Maximum retroactive benefits on late application

Benefits paid upon early or normal retirement shall commence on the earlier of the member's required beginning date or on the first day of the month following the later of, the date on which the member's contributory service terminated, thirty days after the written application for retirement benefits is received in the office of administrator, or the date specified in the member's application for retirement. In any event the benefit shall be paid from the first day of the month. The last payment shall be made from the first day of the month in which the member's death occurs.

It is very important to also note that if you have initiated a "purchase of service contract" with SDRS, the contract must be completed and fully paid to receive full service credit for the purchase. Failure to fulfill the contract requirements will affect your retirement benefit.

Question #3: What is the definition of “termination of employment” for retirement purposes?

Termination of employment is covered by SDCL 3-12-47(70), which provides the following definition in law:

§ 3-12-47(70) Terminated,” complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member’s participating unit, including payment to the member for unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of employer-provided health insurance coverage, severance of employer-provided life insurance coverage, or severance of any other such employer-provided perquisite of employment granted by the member’s participating unit to an active employee;

By SDRS definition, your employment must be terminated the month prior to the date that retirement benefits begin as Internal Revenue Service (IRS) regulations that govern SDRS prohibit distributions from a qualified retirement system while the member is still employed. South Dakota law also requires that SDRS must receive the verification of your employment termination from your employer before any SDRS benefit can begin.

Question #4: Can I become reemployed after I retire?

Yes, but it is very important to understand and to adhere to the requirements of South Dakota Codified Law. SDCL 3-12-81.1 and SDCL 3-12-200 outline the regulatory requirements regarding reemployment for a retired member.

§3-12-81.1 Reemployment of retired member-Termination of relationship with initial participating unit – Hiring procedures

If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member’s employment relationship with the initial participating unit, as outlined in subdivision 3-12-47 (70) and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial participating unit’s system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit’s system representative shall so certify to the system. If a single participating unit is both the member’s initial participating unit and the member’s second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its chief executive officer, the officer’s agent, or the chair of its governing commission or board shall so certify.

§3-12-200. Retired member who reenters covered employment on or after April 1, 2010 – Benefits and membership

If, on or after April 1, 2010, a retired member reenters covered employment at some time after the three consecutive calendar months that start with the member’s effective date of retirement, the member’s retirement benefits and continued membership shall be administered pursuant to this section.

If the retired member’s benefits have not been reduced pursuant to §3-12-106, the member’s monthly retirement annuity shall be reduced by fifteen percent and the annual increase shall be eliminated throughout the period that the member reenters covered employment in accord with

§3-12-88. The reduction and elimination shall cease if the member again terminates covered employment. However, the foregoing provisions notwithstanding, the reduction and elimination do not apply if the member retired as a Class B member other than a justice, judge or magistrate judge and subsequently reenters covered employment as a Class A member.

If the retired member's benefits have been reduced pursuant to §3-12-106, the member's benefits shall be suspended during the period that the member reenters covered employment and the annual increase shall be eliminated during the period that the member reenters covered employment, both in accord with §3-12-111.1. The suspension and elimination shall cease if the member again terminates covered employment.

Whether the member's retirement benefits are unreduced or have been reduced, contributions required of the member pursuant to §3-12-71 shall be deposited by the member's participating unit with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3-13. The contributions shall be governed by §457 of the Internal Revenue Code of 1954, as amended and in effect on January 1, 2010. The foregoing, notwithstanding, the contributions required of the member's employer unit pursuant to §3-12-71 shall be deposited into the member trust fund created by this chapter, but without any association with or credit to the member. The member may not earn any additional benefits associated with the period that the member reenters covered employment.

Important Points:

- 1) Qualifying termination of employment must be physical as well as contractual. In all cases, the member's employment termination must be completed and certified by the employer. No formal or informal agreement regarding reemployment prior to retirement of any kind may exist.
- 2) A termination period of three (3) full calendar months must be completed before a member returns to covered employment. The termination period begins on the effective date of the member's retirement. If the member returns to covered employment prior to completing a full three (3) month termination period, the termination and retirement is considered invalid by law and all retirement benefits paid to the member must be repaid to the system, with interest.

Question #5: I'm not sure I understand what the law is saying. What happens if I retire with the Rule of 85 – Special Early Retirement – and want to become reemployed with a participating SDRS employer?

- 1) If you have a qualifying employment termination; and
- 2) Qualify for a Normal or Special Early Retirement Benefit; and
- 3) Meet the full three (3) calendar month termination period; and
- 4) Return to employment with a public employer that participates in SDRS, then:
 - The SDRS retirement benefit payment will continue during the reemployment period but will have a 15% reduction applied to the benefit payment during the reemployment period; and
 - The cost-of-living (COLA) yearly adjustment will be eliminated on the retirement benefit for the period of reemployment (upon termination of the reemployment a full fiscal year period will need to be met to be eligible for COLA); and
 - Your SDRS contributions as an employee will be deposited to your SDRS-SRP account, and will be available to you upon termination of the reemployment; and
 - As a retire/rehire you will not be credited with any employer contributions during the period of reemployment, and you will not earn any service credits in the SDRS plan; and
 - You will no longer be eligible for SDRS disability and family benefit coverage.

Question #6: What if I retire early with a reduced SDRS benefit and return to work with a participating SDRS employer?

- 1) If you have a qualifying employment termination; and
- 2) Retire early with a reduced benefit; and
- 3) Meet the full three (3) calendar month termination period; and
- 4) Return to employment with a public employer that participates in SDRS, then
 - The SDRS retirement benefit payment will be suspended during the period of reemployment; and
 - The cost-of-living (COLA) yearly adjustment will be eliminated on the retirement benefit for the period of reemployment (upon termination of the reemployment a full fiscal year period will need to be met to be eligible for COLA); and
 - Your SDRS contributions as an employee will be deposited to your SDRS-SRP account, and will be available to you upon termination of your reemployment; and
 - As a retire/rehire you will not be credited with any employer contributions during the period of reemployment, and you will not earn any service credits in the SDRS plan; and
 - You will no longer be eligible for SDRS disability and family benefit coverage.

Question #7: Do I need to contact SDRS if I wish to retire?

Yes. In addition to notification to your employer, SDRS does require that an application for retirement benefits be received in the SDRS office at least 31 days prior to the expected month of retirement. In addition to your retirement application, you need to submit a copy of your birth certificate and, if applicable, a copy of your spouse's birth certificate and a copy of your marriage certificate. It is important that you do not delay in contacting the SDRS office should you wish to start a retirement benefit.

Question #8: If I have any questions or need any assistance how do I contact SDRS?

If you are planning a trip to Pierre and would like to meet with a retirement planner in-person, we are located at 222 East Capitol Ave, Suite 8, Pierre South Dakota, and the main entrance is located on the east side of the building. We encourage you to make an advanced appointment to assure sufficient time to discuss your needs.

Other contact information:

Phone Numbers:	Local:	605-773-3731
	Toll-Free:	1-888-605-SDRS
	Fax:	605-773-3949
Mailing Address:	South Dakota Retirement System PO Box 1098 Pierre SD 57501-1098	
Email Address:	sdrsweblink@state.sd.us	

Please feel free to contact SDRS with any questions or concerns you may have regarding your retirement benefits.



South Dakota Retirement System

Guide to Retirement and Reemployment Provisions

Severance of Employment Prior to Retirement

South Dakota Codified Law (“SDCL”) § 3-12-47(70): “Terminated,” complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member’s participating unit, including payment to the member for unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of employer provided health insurance coverage, severance of employer provided life insurance coverage, or severance of any other such employer provided perquisite of employment granted by the member’s participating unit to an active employee.

Important Points

- The employee has absolutely and unconditionally resigned; forfeited all continued rights to employment; and is considered a terminated employee for any other employee benefits, including any employer provided group health or life insurance plan and any similar Section 125 plans or accounts; **and**
- Compensation for any accumulated annual leave, sick leave, or early retirement has been paid to the employee, if applicable.

SDRS must receive the verification of termination from the employer and the member must receive the member’s final payroll from the employer before a SDRS retirement benefit can be paid - SDCL § 3-12-90. SDRS anticipates the minimum time necessary to accomplish this is one normal pay period.

- No agreement to reemploy has been made informally or formally prior to termination of employment. Employers cannot make any promises, directly or indirectly, that the terminating employee will be reemployed and, in fact, should follow whatever normal practices are used to fill a vacant position; **and**
- If a commission or board governs the employer entity, the employee’s resignation has been accepted in the form of a motion that notes all employment rights are forfeited; **and**
- If the terminating employee is obligated under an employment contract that is prematurely terminated due to the resignation, any forfeiture provisions for premature termination must have been activated. If the provisions have been waived, the rationale for waiving them should be included in the motion to accept the resignation.

A qualifying termination of employment must be physical as well as contractual.



Dakota Retirement System

Guide to Retirement and Reemployment Provisions

Reemployment of Retired Member – Benefits & Membership

South Dakota Codified Law §3-12-200. Retired member who reenters covered employment on or after April 1, 2010 – Benefits and membership. *If, on or after April 1, 2010, a retired member reenters covered employment at some time after the three consecutive calendar months that start with the member's effective date of retirement, the member's retirement benefits and continued membership shall be administered pursuant to this section.*

If the retired member's benefits have not been reduced pursuant to §3-12-106, the member's monthly retirement annuity shall be reduced by fifteen percent and the annual increase shall be eliminated throughout the period that the member reenters covered employment in accord with §3-12-88. The reduction and elimination shall cease if the member again terminates covered employment. However, the foregoing provisions notwithstanding, the reduction and elimination do not apply if the member retired as a Class B member other than a justice, judge or magistrate judge and subsequently reenters covered employment as a Class A member.

If the retired member's benefits have been reduced pursuant to §3-12-106, the member's benefits shall be suspended during the period that the member reenters covered employment and the annual increase shall be eliminated during the period that the member reenters covered employment, both in accord with §3-12-111.1. The suspension and elimination shall cease if the member again terminates covered employment.

Whether the member's retirement benefits are unreduced or have been reduced, contributions required of the member pursuant to §3-12-71 shall be deposited by the member's participating unit with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3-13. The contributions shall be governed by §457 of the Internal Revenue Code of 1954, as amended and in effect on January 1, 2010. The foregoing, notwithstanding, the contributions required of the member's employer unit pursuant to §3-12-71 shall be deposited into the member trust fund created by this chapter, but without any association with or credit to the member. The member may not earn any additional benefits associated with the period that the member reenters covered employment.

Important Points

- A termination period of three (3) full calendar months must be completed before a member returns to covered employment. The termination period begins on the effective date of the member's retirement. If the member returns to covered employment prior to completing a full three (3) month termination period, the termination and retirement is considered invalid by law and all retirement benefits paid to the member must be repaid to the System, with interest.
- Benefits obtained under regular retirement or special early retirement will be reduced by fifteen percent and the annual COLA will be eliminated.
- Benefits under early retirement will be suspended and the annual COLA will be eliminated.
- Employee SDRS contributions will be deposited during reemployment in the SDRS-Supplemental Retirement Plan.



South Dakota Retirement System

Guide to Retirement and Reemployment Provisions

Reemployment of a Retired Member

South Dakota Codified Law § 3-12-81.1. Reemployment of retired member-Termination of relationship with initial participating unit-Hiring procedures. *If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member's employment relationship with the initial participating unit, as outlined in subdivision 3-12-47(70) and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its chief executive officer, the officer's agent, or the chair of its governing commission or board shall so certify.*

Important Points

- If the retired member is reemployed, the member shall have been subject to all proceedings and requirements associated with hiring a new employee into the position without any prior expressed or implied agreement to be reemployed; and
- If the retired member is reemployed, and if a commission or board governs the entity, the reemployment decision, including the new salary and terms of employment, must be stated in a single motion. In order for the separation of service to be valid, the employer must have discretion as to the salary and conditions of reemployment. In addition, the reemployment decision may not be made in the same meeting that the resignation is accepted; and
- If an employee contract is necessary, the reemployment includes a new employment contract with the terms and conditions of the reemployment fully specified.

The member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the participating unit, and the unit's chief executive officer, the officer's agent, or the chair of its governing commission or board shall so certify to the system.



South Dakota Retirement System
PO Box 1098 • Pierre SD 57501-1098
Toll-free: (888) 605-SDRS • Local: (605) 773-3731
www.sdrs.sd.gov