# Chapter 238A

## 2005 EDITION

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## GENERAL PROVISIONS

**238A.005 Definitions.** For the purposes of this chapter:

(1) "Active member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

(2) "Actuarial equivalent" means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

(3) "Board" means the Public Employees Retirement Board.

(4) "Eligible employee" means a person who performs services for a participating public employer, including elected officials other than judges. "Eligible employee" does not include:

(a) Persons engaged as independent contractors;

(b) Aliens working under a training or educational visa;

(c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190, provided sheltered employment or make-work by a public employer;

(d) Persons categorized by a participating public employer as student employees;

(e) Any person who is an inmate of a state institution;

(f) Employees of foreign trade offices of the Economic and Community Development Department who live and perform services in foreign countries under the provisions of ORS 285A.090 (13);

(g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;

(h) Employees of the Oregon University System who are actively participating in an optional retirement plan offered under ORS 243.800;

(i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;

(j) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

(k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who continues to receive retirement benefits while employed; and

(L) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

(b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals; and

(c) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064.

(6) "Fund" means the Public Employees Retirement Fund.

(7)(a) "Hour of service" means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) "Hour of service" does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation laws.

(8) "Inactive member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.

(9) "Individual account program" means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(10) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has

not been terminated under ORS 238A.110 or 238A.310.

(11) "Participating public employer" means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.

(12) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(13) "Police officer" means a police officer as described in ORS 238.005.

(14) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).

(15) "Retired member" means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.

(16)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

(B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the employee.

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on August 29, 2003.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on August 29, 2003.

(E) Retroactive payments made to an employee to correct a clerical error, pursuant to an award by a court or by order of or pursuant to a conciliation agreement with an administration agency charged with enforcing federal or state law protecting the employee's rights to employment or wages, which shall be allocated to and deemed paid in the periods in which the work was done or in which the work would have been done.

(F) The amount of an employee contribution to the individual account program that is paid by the employer and deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(a).

(G) The amount of an employee contribution to the individual account program that is not paid by the employer under ORS 238A.335.

(H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS 652.190.

(c) "Salary" does not include the following amounts:

(A) Travel or any other expenses incidental to employer's business which is reimbursed by the employer.

(B) Payments made on account of an employee's death.

(C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid leave.

(D) Any severance payment, accelerated payment of an employment contract for a future period or advance against future wages.

(E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

(F) Payment for a leave of absence after the date the employer and employee have agreed that no future services in a qualifying position will be performed.

(G) Payments for instructional services rendered to institutions of the Department of Higher Education or the Oregon Health and Science University when those services are in excess of full-time employment subject to this chapter. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months covered by the contract.

(H) The amount of an employee contribution to the individual account program that is paid by the employer and is not deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

(I) Any amount in excess of $200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the $200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of

which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

(17) "System" means the Public Employees Retirement System. [2003 c.733 §1; 2005 c.152 §1; 2005 c.332 §2; 2005 c.728 §4]

**Note:** Section 3, chapter 332, Oregon Laws 2005, provides:

**Sec. 3.** The amendments to ORS 238.005 and 238A.005 by sections 1 and 2 of this 2005 Act apply only to members of the Public Employees Retirement System who die on or after the effective date of this 2005 Act [June 29, 2005]. [2005 c.332 §3]

**238A.010 Computation of hours of service.** For the purpose of computing hours of service under this chapter, an eligible employee shall be credited with 40 hours of service for each calendar week in which the employee was employed in a qualifying position unless otherwise shown by records maintained by the participating public employer. [2003 c.733 §1a]

## OREGON PUBLIC SERVICE RETIREMENT PLAN

**238A.025 Oregon Public Service Retirement Plan established.** (1) The Oregon Public Service Retirement Plan is established. The purpose of the Oregon Public Service Retirement Plan is to provide career public employees with a secure and fair retirement income at an affordable, stable and predictable cost to the taxpayers. The Oregon Public Service Retirement Plan is composed of a pension program and an individual account program. The pension program and the individual account program are separate accounts for purposes of federal income tax qualification, and the assets of each program must be held as part of the trust established by ORS 238.660 for the exclusive benefit of the participants and beneficiaries. It is the intent of the Legislative Assembly that pursuant to section 414(k) of the Internal Revenue Code the individual account program be established and maintained as a tax-qualified defined contribution governmental plan for the purposes of sections 72(d) and 415 of the Internal Revenue Code. The Public Employees Retirement Board may create separate accounts within the Public Employees Retirement Fund for the pension program and the individual account program.

(2) Notwithstanding any provision of ORS chapter 238, any person who is employed by a participating public employer on or after August 29, 2003, and who has not established membership in the Public Employees Retirement System before August 29, 2003, is entitled to receive only the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after August 29, 2003, and has no right or claim to any benefit under ORS chapter 238 except as specifically provided by this chapter.

(3)(a) Any person who is an active member of the Public Employees Retirement System on August 28, 2003, is entitled to receive the benefits provided by ORS chapter 238 for all service performed before, on and after August 29, 2003, unless the person has a break in service on or after August 29, 2003. If the person has a break in service on or after August 29, 2003, the person is entitled to receive the benefits provided by ORS chapter 238 for all creditable service performed before the break in service, and the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers after the break in service.

(b) Except as provided in this subsection, a person has a break in service for the purposes of this subsection if the person performs no service with a participating public employer in a qualifying position for a period of six consecutive months.

(c) If a person leaves employment with a participating public employer for purposes that would qualify the person for family leave under ORS 659A.150 to 659A.186, the person has a break in service for the purposes of this subsection only if the person performs no service with a participating public employer in a qualifying position for a period of 12 consecutive months after leaving employment with the participating public employer.

(d) If a person leaves employment with a participating public employer for career development purposes pursuant to written authorization of the participating public employer under a written policy of the employer that applies generally to the class of employees to which the member belongs, the person has a break in service for the purposes of this subsection only if the person performs no service with a participating public employer in a qualifying position for a period of 12 consecutive months after leaving employment with the participating public employer.

(e) A person does not have a break in service for the purposes of this subsection by reason of any period of time during which the person leaves employment with a participating public employer for the purpose of serving as a member of the Legislative Assembly during a legislative session.

(f) A person does not have a break in service for the purposes of this subsection by reason of any period of time during which the person is absent from employment with a participating public employer and receives

a disability retirement allowance under ORS 238.320.

(g) A person does not have a break in service for the purposes of this subsection by reason of any period of time during which the person leaves employment with a participating public employer based on the seasonal nature of the person's employment as long as the person returns to employment with the public employer before the expiration of 12 full calendar months.

(4) A person establishes membership in the system before August 29, 2003, for the purposes of this section if:

(a) The person is a member of the system, or a judge member of the system, on August 28, 2003; or

(b) The person performed any period of service for a participating public employer before August 29, 2003, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system.

(5) Except as provided in this chapter, ORS chapter 238 does not apply to the Oregon Public Service Retirement Plan.

(6) The provisions of this section do not apply to a person elected or appointed as a judge as defined in ORS 238.500. [2003 c.733 §2; 2005 c.332 §6; 2005 c.808 §9]

**Note:** Section 7, chapter 332, Oregon Laws 2005, provides:

**Sec. 7.** (1) ORS 238A.025 (3)(f) applies to any period of time before, on or after August 29, 2003, during which an employee is entitled to receive a disability retirement allowance under ORS 238.320.

(2) ORS 238A.025 (3)(g) applies to any period of time on or after August 29, 2003, during which an employee leaves employment with a participating public employer based on the seasonal nature of the employment. [2005 c.332 §7]

**Note:** Section 2a, chapter 733, Oregon Laws 2003, provides:

**Sec. 2a.** (1) Any person who is an inactive member of the Public Employees Retirement System on August 28, 2003, is entitled to receive the benefits provided by ORS chapter 238 for all service performed before August 29, 2003. Except as provided in subsection (2) of this section, the person is eligible only to receive the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after August 29, 2003, unless the person returns to a qualifying position without a break in service as described in ORS 238A.025 (3). If the person returns to a qualifying position without a break in service as described in ORS 238A.025 (3), the person shall be treated in the same manner as provided by ORS 238A.025 (3) for persons who are active members of the system on August 28, 2003. If the person has a break in service as described in ORS 238A.025 (3), but returns to a qualifying position before January 1, 2004, the person is entitled to receive the benefits provided by ORS chapter 238 for all creditable service performed before January 1, 2004, and the benefits provided under the Oregon Public Service Retirement Plan for periods of service with participating public employers on and after January 1, 2004.

(2) A person who is an inactive member of the Public Employees Retirement System on August 28, 2003, does not have a break in service as described in ORS 238A.025 (3) if:

(a) The person is vested, as defined in ORS 238.005, on August 28, 2003; and

(b) The person returns to qualifying employment before January 1, 2006, with the same participating public employer that employed the person immediately before the person became an inactive member.

(3) The provisions of this section do not apply to a person elected or appointed as a judge as defined in ORS 238.500. [2003 c.733 §2a; 2005 c.332 §8]

**238A.030 Information technology system.** Subject to such direction and oversight as may be provided by the Legislative Assembly, the Public Employees Retirement Board shall take all steps necessary to develop and implement a dedicated information technology system to manage the Oregon Public Service Retirement Plan established by ORS chapter 238A. The board shall ensure that the essential record keeping components of the information technology system are in operation as soon as practicable. The board shall ensure that the information technology system is designed to support the current and future business and technology needs of the Public Employees Retirement System arising out of the implementation of ORS chapter 238A. [2003 c.733 §83]

**Note:** 238A.030 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 238A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## ADMINISTRATION

**238A.050 Oregon Public Service Retirement Plan part of Public Employees Retirement System.** (1) The Oregon Public Service Retirement Plan is part of the Public Employees Retirement System and is administered by the Public Employees Retirement Board.

(2) ORS 238.225, 238.229, 238.231, 238.445, 238.450, 238.455, 238.458, 238.460, 238.465, 238.470, 238.600, 238.601, 238.605, 238.610, 238.615, 238.618, 238.630, 238.635, 238.640, 238.645, 238.655, 238.660, 238.661, 238.665, 238.675, 238.692, 238.694, 238.695, 238.696, 238.698, 238.700, 238.705, 238.710 and 238.715 apply to the Oregon Public Service Retirement Plan.

(3) The Oregon Investment Council shall invest the assets of the Oregon Public Service Retirement Plan as a part of the Public Employees Retirement Fund. Except as provided by subsection (4) of this section, the investment of Oregon Public Service Retirement Plan assets is subject to the provisions of ORS 293.701 to 293.820. The Oregon Investment Council may invest assets of the individual account program and pension pro-

gram differently than the other assets of the Public Employees Retirement System.

(4) Investment of the assets of the Oregon Public Service Retirement Plan is not subject to the limitations imposed by ORS 293.726 (6).

(5) The board may contract with a private provider for the administration of the individual account program. The board is not subject to the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this subsection. The board shall establish procedures for inviting proposals and awarding contracts under this subsection. [2003 c.733 §§3,3a; 2005 c.808 §§15,16]

**Note:** Section 46, chapter 733, Oregon Laws 2003, provides:

**Sec. 46.** As soon as practicable after August 29, 2003, the Public Employees Retirement Board shall submit the provisions of ORS chapter 238A to the Internal Revenue Service and seek approval of the pension program and individual account program as parts of a tax-qualified governmental retirement plan under the Internal Revenue Code. [2003 c.733 §46; 2005 c.808 §21]

## PARTICIPATION BY PUBLIC EMPLOYERS

**238A.070 Participation generally.** (1) All public employers participating in the Public Employees Retirement System on August 29, 2003:

(a) Shall continue to be participating public employers for the purpose of the Oregon Public Service Retirement Plan;

(b) Shall provide benefits under the pension program established under ORS 238A.100 to 238A.245 for eligible employees who are members of the pension program; and

(c) Shall participate in the individual account program.

(2) Any participating public employer that provided retirement benefits under ORS chapter 238 for some but not all of the employees of the participating public employer on August 28, 2003, need not provide benefits under the Oregon Public Service Retirement Plan for any class of employees who were not members of the system on August 28, 2003.

(3) Any public employer that is not a participating public employer on August 28, 2003, may become a participating public employer under the pension program or the individual account program, or both. A public employer may become a participating public employer under this subsection only for the purposes of service performed by eligible employees of the public employer on or after the date the public employer elects to participate in the program. [2003 c.733 §4]

## PENSION PROGRAM

### (Membership)

**238A.100 Establishing membership under pension program.** (1) Except as provided by subsection (2) of this section, an eligible employee who is employed in a qualifying position on or after August 29, 2003, by a public employer that is participating in the pension program and who will not receive benefits under ORS chapter 238 for service with the participating public employer pursuant to the provisions of ORS 238A.025 becomes a member of the pension program on the first day of the month after the employee completes six full calendar months of employment. The six-month requirement may not be interrupted by more than 30 consecutive working days.

(2) A person who is elected or appointed to an office with a fixed term other than as a member of the Legislative Assembly, or who is appointed by the Governor to an office as head of a department, may elect not to become a member of the pension program by giving the Public Employees Retirement Board written notice not later than 30 days after taking office. An election under this subsection also operates as an election not to become a member of the individual account program. An election under this subsection is irrevocable during the term of office for which the election is made. [2003 c.733 §5]

**238A.110 Termination of membership.** Membership under the pension program terminates when:

(1) A member dies;

(2) A member withdraws under ORS 238A.120; or

(3) A member forfeits retirement credit under ORS 238A.145. [2003 c.733 §6]

### (Vesting)

**238A.115 Vesting.** (1) A member of the pension program becomes vested in the pension program on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five calendar years. The five calendar years need not be consecutive, but are subject to the provisions of subsection (2) of this section.

(b) The date on which an active member reaches the normal retirement age for the member under ORS 238A.160.

(c) If the pension program is terminated, the date on which termination becomes effective, but only to the extent the pension program is then funded.

(2) If a member of the pension program who is not vested in the pension program performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (1)(a) of this section.

(3) Solely for purposes of determining whether a member is vested under this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee. [2003 c.733 §7]

**(Withdrawal)**

**238A.120 Withdrawal from pension program by vested inactive member.** (1) A vested inactive member may withdraw from the pension program if:

(a) The actuarial equivalent of the member's benefit under the pension program at the time of withdrawal is $5,000 or less; and

(b) The inactive member has separated from all service with participating public employers and with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust.

(2) Upon withdrawal under this section, the Public Employees Retirement Board shall pay the withdrawing member the actuarial equivalent of the member's benefit in a lump sum.

(3) If a vested inactive member withdraws from the pension program under this section and is thereafter reemployed by a participating public employer:

(a) The person may reestablish membership in the pension program only for the purpose of service performed after the person is reemployed; and

(b) Any service performed before the withdrawal may not be credited toward the period of service required by ORS 238A.100 or 238A.115 or toward the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155.

(4) For the purposes of this section, the actuarial equivalent of a member's benefit does not include any value attributable to adjustments to the benefit under ORS 238A.210. [2003 c.733 §8; 2005 c.152 §2]

**(Computation of Benefit)**

**238A.125 Amount of pension; rules.** (1) Upon retiring at normal retirement age, a vested pension program member shall be paid an annual pension for the life of the member as follows:

(a) For service as a police officer or firefighter, 1.8 percent of final average salary multiplied by the number of years of retirement credit attributable to service as a police officer or firefighter.

(b) For service as other than a police officer or firefighter, 1.5 percent of final average salary multiplied by the number of years of retirement credit attributable to service as other than a police officer or firefighter.

(2) Notwithstanding any provision of ORS 238A.100 to 238A.245, the annual benefit payable to a member under the pension program and under any other tax-qualified defined benefit plan maintained by the participating public employer may not exceed the applicable limitations set forth in 26 U.S.C. 415(b), as in effect on August 29, 2003. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

(3) The board shall make no actuarial adjustment in a member's pension calculated under this section by reason of the member's retirement after normal retirement age. [2003 c.733 §9]

**238A.130 Final average salary; rules.** (1) Except as provided in subsection (3) of this section, for purposes of the computation of pension program benefits under ORS 238A.125, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid to an active member in the three consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year paid to the member in all of those years, without regard to whether the member was employed for full calendar years.

(b) One-third of the total salary paid to an active member in the last 36 calendar months of membership before the effective date of retirement of the member.

(2) For the purposes of calculating the final average salary of a member under subsection (1) of this section, the Public Employees Retirement Board shall:

(a) Include any salary paid in or for the calendar month of separation from employment;

(b) Exclude any salary for any pay period before the first full pay period that is included in the three consecutive calendar years of membership under subsection (1)(a) of this section; and

(c) Exclude any salary for any pay period before the first full pay period that is included in the last 36 calendar months of membership under subsection (1)(b) of this section.

(3) For purposes of the computation of pension program benefits under ORS 238A.125 of a person employed by a local government as defined in ORS 174.116, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year earned by an active member in the three consecutive calendar years of membership that produce the highest average salary, including calendar years in which the member was employed for less than a full calendar year. If the number of consecutive calendar years of active membership before the effective date of retirement of the member is three or less, the final average salary for the member is the average salary per calendar year earned by the member in all of those years, without regard to whether the member was employed for full calendar years.

(b) One-third of the total salary earned by an active member in the last 36 calendar months of membership before the effective date of retirement of the member.

(4) For purposes of calculating the final average salary for a member during any period in which the member worked in a qualifying position that requires fewer than 2,000 hours of service in a calendar year, the salary of the member for that period is the salary that would have been paid if the member had worked in the same position on a full-time basis.

(5) For the purposes of calculating the final average salary of a member under this section, the salary of the member does not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same class of employees as established by rule of the Public Employees Retirement Board. The Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees. [2003 c.733 §10; 2005 c.332 §16; 2005 c.808 §34]

**(Retirement Credit)**

**238A.140 Accrual of retirement credit; rules.** (1) A pension program member shall accrue no retirement credit for any calendar year in which the member has fewer than 600 hours of service. A member may not accrue more than one full year of retirement credit in any calendar year.

(2) When an eligible employee becomes a member under ORS 238A.100, the board shall credit the eligible employee with retirement credit for the period of employment required of the employee under ORS 238A.100.

(3) Except as provided in this section, a pension program member shall accrue one full year of retirement credit for each calendar year in which the member has 2,000 hours of service or more.

(4) Except as provided in this section, a pension program member shall accrue a prorated year of retirement credit for each calendar year in which the member has 600 hours of service or more but fewer than 2,000 hours of service. The prorated retirement credit shall be calculated by dividing the number of hours of service by 2,000.

(5) If an active member of the pension program works as a school employee for one or more participating public employers during a calendar year, and the number of hours of service required for a full-time school employee employed by the participating public employer or employers is less than 2,000, the member accrues retirement credit for the calendar year as follows:

(a) The member accrues one full year of retirement credit for the calendar year if the member's hours of service as a school employee are equal to or greater than the number of hours of service required of a full-time school employee employed in the same position or a comparable position by the participating public employer or employers during the calendar year.

(b) The member accrues a prorated year of retirement credit for each calendar year in which the member has at least 600 hours of service but less than the number of hours of service required of a full-time school employee employed in the same position or a comparable position by the participating public employer or employers during the calendar year. The prorated retirement credit shall be calculated by dividing the number of the member's hours of service as a school employee by the number of hours of service required of a full-time school employee in the same position or a comparable position.

(c) The Public Employees Retirement Board shall adopt rules governing the accrual of retirement credit on a prorated basis by an active member who works in both a school employee position and another qualifying position during the same calendar year, or who works as a school employee for more than one participating public employer during the same calendar year.

(6) An active member of the pension program who works as an academic employee of a community college during a calendar year:

(a) Accrues one full year of retirement credit for the calendar year if the member is employed 1.0 full-time equivalent on a nine-month or 12-month basis.

(b) Accrues a prorated year of retirement credit for each calendar year in which the member performs the services of less than 1.0 full-time equivalent. The member is entitled to prorated retirement credit under this paragraph in an amount determined by dividing by 1,200 the number of hours calculated to be the equivalent of the percentage in excess of 0.375 full-time equivalent for a member employed on a 12-month basis, or in excess of 0.50 full-time equivalent for a member employed on a nine-month basis.

(7) For purposes of this section, "school employee" means:

(a) A person who is employed by a common school district, a union high school district or an education service district;

(b) An employee of the State Board of Higher Education or the Oregon Health and Science University who is engaged in teaching or other school activity at an institution of higher education;

(c) An employee of the Department of Human Services, the Oregon Youth Authority, the Department of Corrections or the State Board of Education who is engaged in teaching or other school activity at an institution supervised by the authority, board or department; and

(d) An employee of a community college district other than an academic employee. [2003 c.733 §11; 2005 c.332 §§4,21]

**Note:** Section 5, chapter 332, Oregon Laws 2005, provides:

**Sec. 5.** The amendments to ORS 238A.140 by section 4 of this 2005 Act apply to service by an employee of the Oregon Health and Science University on or after August 29, 2003. [2005 c.332 §5]

**Note:** Section 22, chapter 332, Oregon Laws 2005, provides:

**Sec. 22.** Section 20 of this 2005 Act [238A.142] and the amendments to ORS 238A.140 by section 21 of this 2005 Act apply to all service performed by an academic employee of a community college on or after August 29, 2003. [2005 c.332 §22]

**238A.142 Accrual by academic employees of community college.** (1) Subject to ORS 238A.140 (6), an academic employee of a community college who during a calendar year is employed 0.375 full-time equivalent on a 12-month basis, or is employed 0.50 full-time equivalent on a nine-month basis, is considered to have performed 600 hours of service in the calendar year for all purposes under this chapter.

(2) Subject to ORS 238A.140 (6), an academic employee of a community college who during a calendar year is employed 1.0 full-time equivalent on a nine-month or 12-month basis is considered to have performed 1,200 hours of service in the calendar year for all purposes under this chapter.

(3) The governing body of a community college shall determine the duties of an academic employee of the community college that constitute a full-time equivalent in any discipline or academic activity for the purposes of this section. [2005 c.332 §20]

**Note:** See second note under 238A.140.

**238A.145 Loss of retirement credit.** (1) A pension program member who is not vested forfeits all retirement credit if the member performs fewer than 600 hours of service in each of five consecutive calendar years. A forfeiture under this section takes effect at the end of the fifth calendar year.

(2) If a pension program member forfeits retirement credit under this section and is subsequently reemployed by a participating public employer:

(a) The person may acquire retirement credit under the pension program only for the purpose of service performed after the person is reemployed; and

(b) Any service performed before the forfeiture may not be credited toward the period of service required by ORS 238A.100 or 238A.115, or toward the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155. [2003 c.733 §12]

**238A.150 Retirement credit for service in uniformed services; rules.** (1) Notwithstanding any other provision of ORS 238A.100 to 238A.245, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to accrue retirement credit, credit toward the probationary period required by ORS 238A.100 and credit toward the vesting requirements of ORS 238A.115 under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing benefits and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on August 29, 2003. Benefits and service credit under rules adopted by the board pursuant to this subsection may not exceed benefits and service credit required under federal law for periods of service in the uniformed services. [2003 c.733 §13]

**238A.155 Retirement credit for periods of disability.** (1) Notwithstanding any other provision of ORS 238A.100 to 238A.245, an active member of the pension program described in subsection (2) of this section who becomes disabled shall accrue retirement credit and hours of service credit for vesting purposes for the period during which the member is disabled.

(2) The provisions of this section apply only to:

(a) A member who has accrued 10 years or more of retirement credit before the member becomes disabled; or

(b) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3) Retirement credit accrues under this section only for as long as the member remains disabled or until the member reaches the normal retirement age under ORS 238A.160.

(4) If a disabled member does not return to employment with a participating public employer after the period of disability, the member shall receive a pension under ORS 238A.180, 238A.185 or 238A.190 upon retirement based on an adjusted salary. The adjusted salary shall be the salary paid to the disabled member on the date the member left active employment with the participating public employer by reason of disability, adjusted for each year after the member left employment and before the member's effective date of retirement to reflect cost-of-living changes, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. Adjustments under this subsection may not exceed a two percent increase or decrease for any year. An adjustment shall be made under this subsection only for calendar years in which the member is disabled for at least six months during the year.

(5) A pension program member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the Public Employees Retirement Board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted. [2003 c.733 §14]

**238A.157 Use of retirement credit under ORS chapter 238.** If a member is eligible to receive retirement benefits under both this chapter and ORS chapter 238 by reason of a break in service under ORS 238A.025, the Public Employees Retirement Board shall treat all service for which retirement credit is granted under ORS chapter 238 as though it were retirement credit under this chapter for the purpose of any statute in this chapter that requires that a member have a specified amount of retirement credit as a condition of retiring or receiving any other benefit under this chapter. [2005 c.332 §12]

**Note:** 238A.157 was added to and made a part of ORS chapter 238A by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**(Retirement)**

**238A.160 Normal retirement age; normal retirement date.** (1) Except as provided in subsections (2) and (3) of this section, normal retirement age for a member of the pension program is the earlier of:

(a) 65 years of age; or

(b) 58 years of age if the member has 30 years or more of retirement credit.

(2) Normal retirement age for a member of the pension program who retires from service as a police officer or firefighter, and who has held a position as a police officer or firefighter continuously for a period of not less than five years immediately preceding the effective date of retirement, is the earlier of:

(a) 60 years of age; or

(b) 53 years of age if the member has 25 years or more of retirement credit.

(3) Normal retirement age for a member of the pension program who retires from service as a school employee as defined by ORS 238A.140 is the earlier of:

(a) 65 years of age; or

(b) 58 years of age if the member has been an active member in 30 or more calendar years.

(4) The normal retirement date of a member is the first day of the month beginning on or after the date the member reaches

normal retirement age. [2003 c.733 §15; 2005 c.808 §35]

**238A.165 Earliest retirement age; earliest retirement date.** (1) Except as provided in this section, earliest retirement age for a member of the pension program is 55 years of age.

(2) Earliest retirement age for a member of the pension program who retires from service as a police officer or firefighter is 50 years of age if the member has held a position as a police officer or firefighter continuously for a period of not less than five years immediately before the effective date of retirement. Earliest retirement date for a member described in this subsection is not later than the date the member reaches 55 years of age.

(3) If a member has a break in service under ORS 238A.025 and is entitled to receive a retirement allowance under ORS chapter 238 in addition to a pension under this chapter, earliest retirement age under this chapter is the age attained by a member when the member could first make application for retirement under the provisions of ORS 238.280.

(4) A member of the pension program who has reached earliest retirement age may retire on an early retirement date that is the first day of any month on or after the member has reached earliest retirement age. [2003 c.733 §16; 2005 c.332 §13]

**238A.170 Latest retirement date; required minimum distributions; rules.** (1) An active member of the pension program who is 70-1/2 years of age or older must retire not later than April 1 of the calendar year following the calendar year in which the member terminates employment with all participating public employers. An inactive member of the pension program must retire not later than April 1 of the calendar year following the calendar year in which the member attains 70-1/2 years of age.

(2) Notwithstanding any other provision of ORS 238A.100 to 238A.245, the entire interest of a member of the pension program must be distributed over a time period commencing no later than the required beginning date set forth in subsection (1) of this section, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on August 29, 2003. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §17]

**(Pension)**

**238A.180 Normal retirement benefit.** Upon retiring on normal retirement date or thereafter, a member of the pension program who is vested shall be paid an annual pension for the life of the member, calculated as provided in ORS 238A.125. The annual pension provided for under this section shall be paid in equal monthly installments, payable as of the first day of each calendar month, beginning on the later of the member's normal retirement date or the member's effective date of retirement and ending on the first day of the month in which the member dies. [2003 c.733 §18]

**238A.185 Early retirement.** A member of the pension program who is vested may retire with a reduced pension that is the actuarial equivalent of the pension provided for in ORS 238A.180 at any time on or after the member's earliest retirement date as described in ORS 238A.165. [2003 c.733 §19]

**238A.190 Survivorship benefits.** (1) Before the effective date of retirement of a member of the pension program, the member may elect to convert the pension calculated under ORS 238A.180 or 238A.185 into the actuarial equivalent pension as follows:

(a) A pension payable monthly during the member's life and, after the death of the member, continuing at the same monthly amount for the life of a beneficiary named by the member in a written designation filed with the Public Employees Retirement Board at the time of election.

(b) A pension payable monthly during the member's life and, subject to modification under subsection (2) of this section, after the death of the member, continuing at the same monthly amount for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

(c) A pension payable monthly during the member's life and, after the death of the member, continuing at one-half of the monthly amount paid to the member for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

(d) A pension payable monthly during the member's life and, subject to modification under subsection (2) of this section, after the death of the member, continuing at one-half of the monthly amount paid to the member for the life of a beneficiary named by the member in a written designation filed with the board at the time of election.

(2) A retired member who elects to receive a pension under subsection (1)(b) or (d) of this section shall receive the pension that the member would have received on the ef-

fective date of retirement under ORS 238A.180 or 238A.185 adjusted by the actual amount of any cost-of-living or other post-retirement adjustments made to the original allowance since the effective date of retirement, if:

(a) The spouse or other beneficiary dies after the member retires; or

(b) The marriage relationship or other relationship with the beneficiary is terminated after the member retires.

(3) An increased benefit under subsection (2) of this section is first effective on the first day of the month following the date on which one of the events specified in subsection (2) of this section occurs.

(4) If a member of the pension program is married on the effective date of retirement, or there exists any other person on the effective date of retirement who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits, the pension payable to the member shall be as provided in subsection (1)(c) of this section with the spouse or other person as beneficiary, unless:

(a) The member has selected a different pension provided for in subsection (1) of this section with the spouse or other person as beneficiary; or

(b) The member submits to the board a document signed by the spouse or other person, acknowledged by a notary public, consenting to a different option or a different beneficiary.

(5) Subsection (4) of this section does not apply to a pension benefit that is paid in a lump sum under ORS 238A.195. [2003 c.733 §20; 2005 c.332 §14]

**238A.195 Cash out of small benefits.** If the monthly pension benefit payable to a member of the pension program under ORS 238A.180 is less than $200, or the monthly death benefit payable to the beneficiary of a deceased member under ORS 238A.230 is less than $200, the Public Employees Retirement Board shall convert the benefit into a lump sum that represents the actuarial equivalent of the present value of the pension or death benefit and pay that amount to the member or the deceased member's beneficiary in lieu of a pension or death benefit under ORS 238A.100 to 238A.245. [2003 c.733 §21]

**238A.200 Actuarial equivalency factor tables.** (1) Once every two calendar years, the Public Employees Retirement Board shall adopt actuarial equivalency factor tables for the purpose of computing the payments to be made to members of the pension program and their beneficiaries and alternate payees under ORS 238.465. The tables may be adopted in conjunction with the biennial evaluation of the Public Employees Retirement System required by ORS 238.605. Tables adopted under this section must use the best actuarial information on mortality available at the time the board adopts the tables, as provided by the actuary engaged by the board. Actuarial equivalency factor tables adopted under this section become effective on January 1 of the calendar year following adoption of the tables by the board. All computations of payments must use the actuarial equivalency factor tables that are in effect on:

(a) The effective date of retirement for any member or alternate payee;

(b) The date that the first payment is due for any person receiving a death benefit under ORS 238A.230; or

(c) The date that the first payment is due after any recalculation of payments that is not attributable to error, including but not limited to recalculations under ORS 238.465 (2).

(2) The board may not defer or delay implementation of the actuarial equivalency factor tables adopted under this section. [2003 c.733 §22]

**(Cost-of-Living Adjustment)**

**238A.210 Cost-of-living adjustment.** (1) As soon as practicable after January 1 each year, the Public Employees Retirement Board shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. Before July 1 each year, the board shall adjust every pension payable under ORS 238A.180, 238A.185 and 238A.190, every disability benefit under ORS 238A.235 and every death benefit payable under ORS 238A.230 by multiplying the monthly payment by the percentage figure determined by the board. If a person has been receiving a pension or benefit for less than 12 months on July 1 of a calendar year, the board shall make a pro rata reduction of the adjustment based on the number of months that the pension or benefit was received before July 1 of the year. The adjustment shall be made for the payments payable on August 1 and thereafter.

(2) An increase or decrease in the benefit payments under this section may not exceed two percent in any year. A pension or death benefit may not be adjusted to an amount that is less than the amount that would have been payable if no cost-of-living adjustment had been made since the pension or death benefit first became payable. [2003 c.733 §23]

**(Employer Contributions)**

**238A.220 Employer contributions.** (1) A participating public employer shall make employer contributions to the Public Employees Retirement Board at intervals designated by the board in the amounts determined by the board under ORS 238.225. All participating public employers shall be considered to be a single employer for the purposes of the employer contributions under ORS 238.225 that are required for funding the pension program established under ORS 238A.025.

(2) For the purpose of the actuarial computation required under ORS 238.225, the board shall separately establish the liability of participating public employers for police officers and firefighters under the pension program and shall require that public employers that employ police officers and firefighters who are members of the pension program make contributions for those employees based on the liability established under this subsection. [2003 c.733 §24; 2005 c.808 §17]

**(Death Benefit)**

**238A.230 Death benefit; rules.** (1) If a member of the pension program who is vested dies before the member's effective date of retirement, the Public Employees Retirement Board shall pay the death benefit provided for in this section to the spouse of the member or to any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits.

(2)(a) The death benefit to be paid under this section shall be for the life of the spouse or other person who is constitutionally required to be treated in the same manner as a spouse, and shall be the actuarial equivalent of 50 percent of the pension that would otherwise have been paid to the deceased member.

(b) For the purpose of paragraph (a) of this subsection, the amount of the pension that would otherwise have been paid to the deceased member shall be calculated:

(A) As of the date of death if the member dies after the earliest retirement date for the member under ORS 238A.165; or

(B) As if the member became an inactive member on the date of death and thereafter retired at the earliest retirement date if the member dies before the earliest retirement date for the member under ORS 238A.165.

(3) The death benefit provided under this section is first effective on the first day of the month following the date of death of the member. The surviving spouse or other person entitled to the death benefit may elect to delay payment of the death benefit, but payment must commence no later than December 31 of the calendar year in which the member would have reached 70-1/2 years of age.

(4) Notwithstanding any other provision of ORS 238A.100 to 238A.245, distributions of death benefits under the pension program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on August 29, 2003. The board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §25; 2005 c.332 §15]

**(Disability Benefit)**

**238A.235 Disability benefit.** (1) Subject to subsection (3) of this section, an active member of the pension program described in subsection (2) of this section who becomes disabled shall receive a disability benefit in the amount of 45 percent of the salary of the member determined as of the last full month of employment before the disability commences.

(2) The provisions of this section apply only to:

(a) A member, other than a school employee as defined by ORS 238A.140, who has accrued 10 years or more of retirement credit before the member becomes disabled;

(b) A member who is a school employee as defined by ORS 238A.140 and who was an active member in 10 or more calendar years before the member becomes disabled; or

(c) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

(3)(a) Except as provided by paragraph (b) of this subsection, the sum of the monthly amount of the disability benefit under this section and of any monthly payment by reason of temporary total disability or permanent total disability under the provisions of ORS chapter 656 may not exceed 75 percent of the member's monthly salary, determined as of the date the member becomes disabled. The Public Employees Retirement Board shall reduce any disability benefit payable under this section in the amount determined to be necessary by the board to meet the limitation imposed by this subsection.

(b) This subsection does not affect cost-of-living adjustments under ORS 238A.210, and increases in the monthly amount of the disability benefit under this section due to those cost-of-living adjustments may not be considered by the Public Employees Retirement Board in determining whether the limitation imposed by this subsection has been exceeded.

(4) A disability retirement pension under this section shall be paid until:

(a) The member is no longer disabled; or

(b) The member attains normal retirement age under ORS 238A.160.

(5) A member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted. [2003 c.733 §25a; 2005 c.808 §36]

**238A.240 Funding of disability benefit.** (1) A participating public employer shall contribute to the pension program, at intervals designated by the Public Employees Retirement Board, all amounts determined by the board to be actuarially necessary to adequately fund the disability benefits to be provided under ORS 238A.235 and the reasonable costs of administering the provision of those benefits. The board shall periodically determine the liabilities attributable to the disability benefits and shall set the amount of contributions to be made by participating public employers, and by other public employers who are required to make contributions on behalf of members, to ensure that those liabilities will be funded no more than 40 years after the date on which the determination is made. All participating public employers shall be considered to be a single employer for the purposes of the contributions required under this section.

(2) For the purpose of the actuarial computation required under subsection (1) of this section, the board shall separately establish the liability of participating public employers for police officers and firefighters, and shall require that public employers that employ police officers and firefighters make contributions for those employees based on the liability established under this section. [2003 c.733 §25b]

### (Reemployment of Retired Members)

**238A.245 Reemployment after commencement of pension benefits.** (1) Except as provided in subsection (3) of this section, the Public Employees Retirement Board shall cease making pension payments to a retired member of the pension program who is reemployed by a participating public employer in a qualifying position. A retired member of the pension program who is employed in a qualifying position becomes an active member of the pension program without serving the probationary period provided for in ORS 238A.100.

(2) If a retired member of the pension program is reemployed under the provisions of this section, any option chosen by the member under ORS 238A.190 is canceled, and upon retiring thereafter the member may elect any option provided for in ORS 238A.180 and 238A.190. The board shall recalculate the pension of the member upon subsequent retirement.

(3) A retired member of the pension program who becomes a member of the Legislative Assembly shall continue to receive the pension elected by the member. A retired member of the pension program who becomes a member of the Legislative Assembly may not elect under ORS 237.650 to become an active member of the Oregon Public Service Retirement Plan or a legislator member of the state deferred compensation plan. [2003 c.733 §26]

## INDIVIDUAL ACCOUNT PROGRAM

### (Membership)

**238A.300 Establishing membership under individual account program.** Except as provided in ORS 238A.100 (2), an eligible employee who is employed in a qualifying position on or after August 29, 2003, by a public employer that is participating in the individual account program and who will not receive benefits under ORS chapter 238 for service with the participating public employer pursuant to the provisions of ORS 238A.025 becomes a member of the individual account program on the first day of the month after the employee completes six full calendar months of employment. The six-month probationary period may not be interrupted by more than 30 consecutive working days. [2003 c.733 §29]

**238A.305 Persons establishing membership in system before August 29, 2003.** (1) Except as provided in subsection (2) of this section, all members of the Public Employees Retirement System who established membership in the Public Employees Retirement System before August 29, 2003, as described in ORS 238A.025 become members of the individual account program on January 1, 2004.

(2) A member of the Public Employees Retirement System may not be a member of the individual account program during any period of time during which the member is required to make contributions to the system under ORS 238.200.

(3) Solely for the purpose of determining the amount of the employee contribution for persons who become members of the individual account program under this section, whether paid by the employee or by the employer, the Public Employees Retirement

Board shall use the definition of "salary" provided by ORS 238.005. If a person who is subject to this subsection has a break in service as described in ORS 238A.025, the board shall use the definition of "salary" provided by ORS 238A.005 for the purpose of determining the amount of the employee contribution to the individual account program for all service by the member after the break in service. [2003 c.733 §33; 2005 c.332 §17]

**238A.310 Termination of membership.** Membership under the individual account program terminates when:

(1) A member dies; or

(2) An inactive member receives a distribution of the vested accounts of the member under ORS 238A.375. [2003 c.733 §30]

**(Vesting)**

**238A.320 Vesting.** (1) A member of the individual account program becomes vested in the employee account established for the member under ORS 238A.350 (2) on the date the employee account is established.

(2) A member who makes rollover contributions becomes vested in the rollover account established for the member under ORS 238A.350 (4) on the date the rollover account is established.

(3) If an employer makes employer contributions for a member under ORS 238A.340, the member becomes vested in the employer account established under ORS 238A.350 (3) on the earliest of the following dates:

(a) The date on which the member completes at least 600 hours of service in each of five calendar years;

(b) The date on which an active member reaches the normal retirement age for the member under ORS 238A.160;

(c) If the individual account program is terminated, the date on which termination becomes effective, but only to the extent the account is then funded;

(d) The date on which an active member becomes disabled, as described in ORS 238A.155 (4); or

(e) The date on which an active member dies.

(4) If a member of the individual account program who is not vested in the employer account performs fewer than 600 hours of service in each of five consecutive calendar years, hours of service performed before the first calendar year of the period of five consecutive calendar years shall be disregarded for purposes of determining whether the member is vested under subsection (3)(a) of this section.

(5) Solely for purposes of determining whether a member is vested under subsection (3)(a) of this section, hours of service include creditable service, as defined in ORS 238.005, performed by the person before the person became an eligible employee, as long as the membership of the person under ORS chapter 238 has not been terminated under the provisions of ORS 238.095 on the date the person becomes an eligible employee. [2003 c.733 §31]

**(Employee Contributions)**

**238A.330 Employee contributions.** (1) A member of the individual account program must make employee contributions to the individual account program of six percent of the member's salary.

(2) Employee contributions made by a member of the individual account program under this section shall be credited by the board to the employee account established for the member under ORS 238A.350 (2). [2003 c.733 §32]

**238A.335 Employer payment of employee contribution.** (1) A participating public employer may agree, by a written employment policy or by a collective bargaining agreement, to pay the employee contribution required under ORS 238A.330. The policy or agreement need not include all members of the individual account program employed by the employer.

(2) An agreement under this section to pay the required employee contribution may provide that:

(a) Employee compensation be reduced to generate the funds needed to make the employee contributions; or

(b) Additional amounts be paid by the employer for the purpose of making the employee contributions, and employee compensation not be reduced for the purpose of generating the funds needed to make the employee contributions.

(3) A participating public employer must give written notice to the Public Employees Retirement Board at the time that a written employment policy or collective bargaining agreement described in subsection (1) of this section is adopted or changed. The notice must specifically indicate whether the agreement is as described in subsection (2)(a) or (b) of this section. Any change in the manner in which employee contributions are to be paid applies only to employee contributions made on and after the date the notice is received by the board. [2003 c.733 §34]

**(Employer Contributions)**

**238A.340 Employer contributions.** (1) A participating public employer may agree, by a written employment policy or agreement, to make employer contributions for members of the individual account program employed by the employer. The percentage of salary paid as employer contributions may not be less than one percent of salary or more than six percent of salary, and must be a whole number. A participating public employer may make an agreement under this section for specific groups of employees employed by the public employer.

(2) If a participating public employer makes employer contributions under this section and the member for which the contributions are made fails to vest in the employer account under the provisions of ORS 238A.320, the Public Employees Retirement Board shall apply the contributions in the employer account against other obligations of the employer under the Oregon Public Service Retirement Plan. [2003 c.733 §36]

**(Individual Accounts)**

**238A.350 Individual accounts established.** (1) Upon any contributions being made to the individual account program by or on behalf of a member of the program, the Public Employees Retirement Board shall create the account or accounts described in this section. Each account shall be adjusted at least annually in accordance with rules adopted by the board to reflect any net earnings or losses on those contributions and to pay the reasonable administrative costs of maintaining the program to the extent the earnings on the assets of the program are insufficient to pay those costs. The adjustments described in this subsection shall continue until the account is distributed to the member or forfeited.

(2) The board shall establish an employee account, which shall consist of the employee contributions made by or on behalf of the member as adjusted under subsection (1) of this section.

(3) If the public employer agrees to make employer contributions under ORS 238A.340, the board shall establish an employer account, which shall consist of the employer contributions made on behalf of the member as adjusted under subsection (1) of this section.

(4) If the board accepts rollover contributions on behalf of the member, the board shall establish a rollover account, which shall consist of the rollover contributions made by the member as adjusted under subsection (1) of this section. Contributions and the earnings attributable to the contributions must be accounted for separately.

(5) The board shall provide an annual statement to each active and inactive member of the program that reflects the amount credited to the accounts established under this section. The statement shall reflect whether the member is vested in the employer account under the provisions of ORS 238A.320. [2003 c.733 §37]

**(Rollover Contributions)**

**238A.360 Rollover contributions; rules.** (1) The Public Employees Retirement Board may accept rollover contributions from a member of the individual account program or from an eligible retirement plan from which the member is entitled to an eligible rollover distribution. The board may accept rollover contributions under this section only if the amounts contributed qualify as eligible rollover distributions under the federal income tax laws governing tax-qualified retirement plans and, if the rollover contribution is made by the member, the contribution is paid to the individual account program within the time limits established by the federal income tax laws governing tax-qualified retirement plans.

(2) The board shall adopt rules and establish procedures for determining whether to accept a rollover contribution under this section and shall require such documentation as may be necessary to ensure that the receipt of a rollover contribution does not jeopardize the status of the individual account program as a tax-qualified governmental plan. [2003 c.733 §38]

**(Limitation on Contributions)**

**238A.370 Limitation on contributions; rules.** Notwithstanding any other provision of ORS 238A.300 to 238A.415, the annual addition to the employee and employer accounts of a member of the individual account program for a calendar year, together with the annual additions to the accounts of the member under any other defined contribution plan maintained by the participating public employer for a calendar year, may not exceed the lesser of $40,000, or 100 percent of the member's compensation for that calendar year. For purposes of this section, "annual addition" has the meaning given that term in 26 U.S.C. 415(c)(2), as in effect on August 29, 2003, and "compensation" has the meaning given the term "participant's compensation" in 26 U.S.C. 415(c)(3), as in effect on August 29, 2003. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect

cost-of-living adjustments authorized by the Internal Revenue Service. [2003 c.733 §39]

**(Withdrawal by Inactive Member)**

**238A.375 Distribution of accounts to inactive member.** (1) An inactive member of the individual account program may elect to receive a distribution of the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320 if the inactive member has separated from all service with participating public employers and with employers who are treated as part of a participating public employer's controlled group under the federal laws and rules governing the status of the system and the fund as a qualified governmental retirement plan and trust.

(2) If an inactive member of the individual account program who is not vested in the employer account receives a distribution under subsection (1) of this section, the employer account of the member is permanently forfeited as of the date of the distribution.

(3) If an inactive member receives a distribution under subsection (1) of this section and is subsequently reemployed by a participating public employer, any service performed before the date the member became an inactive member may not be used toward the period of service required for vesting in the employer account under ORS 238A.320. [2003 c.733 §40; 2005 c.152 §3]

**(Defined Contribution Benefit)**

**238A.400 Payment of accounts at retirement; rules.** (1) Upon retirement on or after the earliest retirement date, as described in ORS 238A.165, a member of the individual account program shall receive in a lump sum the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320.

(2) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual account program may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, in substantially equal installments paid over a period of 5, 10, 15 or 20 years. Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection (4) of this section. The Public Employees Retirement Board shall by rule establish the manner in which installments will be adjusted to reflect investment gains and losses on the unpaid balance during the payout period elected by the member under this subsection. The board by rule may establish minimum monthly amounts payable under this subsection. The board may require that a lump sum payment, or an installment schedule different than the schedules provided for in this subsection, be used to pay the vested amounts in the member's accounts if those amounts are not adequate to generate the minimum monthly amounts specified by the rule.

(3) A member of the individual account program electing to receive installments under subsection (2) of this section must designate a beneficiary or beneficiaries. In the event the member dies before all amounts in the employee and vested employer accounts are paid, all remaining installment payments shall be made to the beneficiary or beneficiaries designated by the member. A beneficiary may elect to receive a lump sum distribution of the remaining amounts.

(4) A member who is entitled to receive retirement benefits under ORS chapter 238 may receive vested amounts in the member's employee account, rollover account and employer account in the manner provided by this section when the member retires for service under the provisions of ORS chapter 238.

(5) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the entire interest of a member of the individual account program must be distributed over a time period commencing no later than the latest retirement date set forth in ORS 238A.170, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on August 29, 2003. The board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §41; 2005 c.152 §10]

**238A.410 Death benefits; rules.** (1) If a member of the individual account program dies before retirement, the amounts in the member's employee account, rollover account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, shall be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of this section.

(2) If a member of the individual account program is married at the time of death, or there exists at the time of death any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits, the spouse or other person shall be the beneficiary for purposes of the death benefit payable under this section unless the spouse or other

person consents to the designation of a different beneficiary or beneficiaries before the designation has been made and the consent has not been revoked by the spouse or other person as of the time of the member's death. Consent and revocation of consent must be in writing, acknowledged by a notary public, and submitted to the Public Employees Retirement Board in accordance with rules adopted by the board. If the member's spouse is designated as the member's beneficiary and the marriage of the member and spouse is subsequently dissolved, the former spouse shall be treated as predeceasing the member for purposes of this section, unless the member expressly designates the former spouse as beneficiary after the effective date of the dissolution or the former spouse is required to be designated as a beneficiary under the provisions of ORS 238.465.

(3) For purposes of this section and ORS 238A.400 (3), if a member fails to designate a beneficiary, or if the person or persons designated do not survive the member, the death benefit provided for in this section shall be paid to the following person or persons, in the following order of priority:

(a) The member's surviving spouse or other person who is constitutionally required to be treated in the same manner as a spouse;

(b) The member's surviving children, in equal shares; or

(c) The member's estate.

(4) The entire amount of a deceased member's vested accounts must be distributed by December 31 of the fifth calendar year after the year in which the member died. Notwithstanding any other provision of this chapter, distributions of death benefits under the individual account program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on August 29, 2003. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements. [2003 c.733 §42]

**238A.415 Credit for service in uniformed services; rules.** (1) Notwithstanding any other provision of ORS 238A.300 to 238A.415, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to credit toward the probationary period required by ORS 238A.300, credit toward the vesting requirements of ORS 238A.320 and contributions under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing contributions and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on August 29, 2003. Contributions and service credit under rules adopted by the board pursuant to this subsection may not exceed contributions and service credit required under federal law for periods of service in the uniformed services. [2003 c.733 §43]

## DIRECT ROLLOVERS

**238A.430 Direct rollovers; rules.** (1) To the extent required by law, and except as otherwise provided by rules adopted by the Public Employees Retirement Board under subsection (4) of this section, any portion of a distribution of benefits described in subsection (2) of this section shall, at the election of and in lieu of distribution to the distributee, be paid directly to an eligible retirement plan specified by the distributee.

(2) The provisions of subsection (1) of this section apply to a distribution of any benefit under the pension program or the individual account program except:

(a) A distribution that is one of a series of substantially equal periodic payments made at least annually for the life or life expectancy of the distributee, or for the joint lives or life expectancies of the distributee and a designated beneficiary;

(b) A distribution that is one of a series of substantially equal periodic payments made at least annually for a specified period of 10 years or more; and

(c) A distribution to the extent that the distribution is required under 26 U.S.C. 401(a)(9).

(3) The provisions of subsection (1) of this section apply to any portion of a distribution of benefits under the pension program or the individual account program even though the portion consists of after-tax employee contributions that are not includable in gross income. Any portion of a distribution that consists of after-tax employee contributions that are not includable in gross income may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26 U.S.C. 401(a) or 403(a) that agrees to account separately for amounts transferred,

including accounting separately for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income. The amount transferred shall be treated as consisting first of the portion of the distribution that is includable in gross income, determined without regard to 26 U.S.C. 402(c)(1).

(4) The board shall adopt rules implementing the direct rollover requirements of 26 U.S.C. 401(a)(31) and the regulations implementing that section, and may adopt administrative exceptions to the direct rollover requirements to the extent permitted by 26 U.S.C. 401(a)(31) and the regulations implementing that section.

(5) All references in this section to federal laws and regulations are to the laws and regulations in effect on August 29, 2003.

(6) For purposes of this section:

(a) "Distributee" means a member, a member's surviving spouse or a member's alternate payee under ORS 238.465.

(b) "Eligible retirement plan" means:

(A) An individual retirement account described in 26 U.S.C. 408(a);

(B) An individual retirement annuity described in 26 U.S.C. 408(b), other than an endowment contract;

(C) A qualified trust under 26 U.S.C. 401(a), that is a defined contribution plan and permits the acceptance of rollover contributions;

(D) An annuity plan described in 26 U.S.C. 403(a);

(E) An eligible deferred compensation plan described in 26 U.S.C. 457(b) that is maintained by an eligible governmental employer described in 26 U.S.C. 457(e)(1)(A) and that agrees to account separately for amounts transferred into such plan from the distributing plan; or

(F) An annuity contract described in 26 U.S.C. 403(b). [2003 c.733 §44]

## RULES

**238A.450 Rules for Oregon Public Service Retirement Plan.** (1) The Public Employees Retirement Board shall adopt rules for the administration of this chapter.

(2) All rules adopted by the board under this section become part of the written plan document for the Public Employees Retirement System that is required to maintain the status of the pension program and the individual account program as parts of a tax-qualified governmental retirement plan under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [2003 c.733 §44a; 2005 c.808 §19]

## CHANGES TO OREGON PUBLIC SERVICE RETIREMENT PLAN

**238A.460 Limitation on powers of board, director and staff.** (1) The Public Employees Retirement Board, the director employed by the board and staff employed by the board may not adopt any rule or take any administrative action that has the effect of increasing the total liability for benefits under this chapter that is in excess of one-tenth of one percent.

(2) Subsection (1) of this section does not apply to any rule or administrative action necessary to maintain qualification of the Public Employees Retirement System and the Public Employees Retirement Fund as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [2003 c.733 §44b]

**238A.465 Legislative intent relating to increased benefits.** It is the intent of the Legislative Assembly that any increase in benefits under the Oregon Public Service Retirement Plan be provided through changes in the individual account program and not through changes in the pension program. [2003 c.733 §44d]

**238A.470 Contract rights under Oregon Public Service Retirement Plan.** The Legislative Assembly may change the benefits payable to persons who become members of the Public Employees Retirement System on or after August 29, 2003, as described in ORS 238A.025, as long as the change applies only to benefits attributable to service performed and salary earned on or after the date the change is made. [2003 c.733 §45]

**238A.475 Application of legislative changes to legislators.** Any law enacted after January 1, 2004, that has the effect of increasing the total liability for benefits under this chapter that is in excess of one-tenth of one percent does not apply to service by members of the Legislative Assembly that entitles those members to benefits under the Oregon Public Service Retirement Plan. [2003 c.733 §44c]