

STATE EMPLOYEES' RETIREMENT ACT (EXCERPT)
Act 240 of 1943

38.50 Election to terminate participation in Tier 1 and to participate in Tier 2; irrevocability; termination of employment; reemployment of deferred or former nonvested member; method of election; signature of spouse; waiver; election subject to eligible domestic relations order act; effect of disqualification notice from United States internal revenue service; exception.

Sec. 50. (1) Except as otherwise provided in subsection (2), the retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on April 30, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight May 31, 1998.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m., June 1, 1998.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under this act effective 12 midnight May 31, 1998. This subdivision does not affect a person's right to health benefits provided under this act pursuant to section 68.

(2) This subsection applies to an individual who was a vested member of Tier 1 on March 30, 1997 and who terminates the employment upon which that membership is based on or after March 31, 1997 but on or before May 31, 1998. Before the termination of his or her employment, an individual described in this subsection may elect in writing to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a member during the period beginning on March 31, 1997 and ending on May 31, 1998. A member described in this subsection who does not make a written election or who does not file the election before the termination of his or her employment continues to be a member or defined member of Tier 1. A member who makes and files a written election under this subsection to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 and become a qualified participant in Tier 2 effective 12 midnight on the day immediately preceding the date of the termination of employment.

(b) Become a former qualified participant in Tier 2 effective 12:01 a.m. on the day immediately following the date described in subdivision (a).

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the date described in subdivision (a). This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 68.

(3) If an individual who was a deferred member on March 30, 1997 or an individual who was a former nonvested member on March 30, 1997 is reemployed before January 1, 2012 and by virtue of that employment is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a deferred member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a deferred member or a former nonvested member during the period beginning on the date of the individual's reemployment and ending upon the expiration of 60 days after the date of that reemployment but no later than February 29, 2012. A deferred member or former nonvested member who makes and files a written election to remain a member of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A deferred member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A deferred member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election.

(b) Become a qualified participant in Tier 2 effective 12:01 a.m. on the first day of the payroll period immediately following the date of the election.

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election. This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 68.

(4) After consultation with the retirement system's actuary and the retirement board, the department of technology, management, and budget shall determine the method by which a member, deferred member, or former nonvested member shall make a written election under this section. If the member, deferred member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(5) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(6) If an individual who was a deferred member of the public school employees retirement system on March 30, 1997 is first employed and entered upon the payroll of his or her employer on or after March 31, 1997 and before January 1, 2012, the retirement system shall provide an opportunity for that individual to elect in writing to become a member of Tier 1 or to become a qualified participant of Tier 2. The retirement system and the individual shall follow the provisions and procedures provided in this section and by the state treasurer as if the individual were a deferred member of this retirement system on March 30, 1997.

(7) If the department of technology, management, and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

(8) This section does not apply to a deferred member or former nonvested member under subsection (3) or a deferred member of the public school employees retirement system under subsection (6) on or after January 1, 2012.

History: Add. 1996, Act 487, Eff. Mar. 31, 1997;—Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011.

Compiler's note: Section 2 of Act 487 of 1996 provides:

"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Enacting section 1 of Act 264 of 2011 provides:

"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."