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Other Requirement Title:
Re-employment of Retired Public Employees

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State-Operated Campuses

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Summary

Section 150 of the Civil Service Law of New York State mandates that retired state or local employees may not be rehired by the state or a political subdivision and receive pension benefits while employed. Sections 211 and 212 of the Retirement and Social Security Law of New York State do provide for exceptions to this rule. This document sets forth guidelines to assist State University of New York campuses in complying with the New York State laws regarding the re-hiring of retired public employees.

Requirement

Background

Section 150 of the Civil Service Law of New York State authorizes that retired public employees may not be rehired and receive pension benefits while serving the state or a political subdivision. However, Sections 211 and 212 of the Retirement and Social Security Law of New York State present exceptions to Section 150.

Section 212 allows a retired state or local government employee to earn up to \$30,000 on a calendar year basis and continue to receive full pension benefits. There is no earnings limit for persons age 65 or older. Retirees reemployed under Section 212 do not need advance approval; the Employees Retirement System (ERS) and the Teachers Retirement System (TRS) send all retirees a mailing each year which includes a form on which to report Section 212 earnings for the previous year.

Section 211 provides a waiver to the Section 212 earnings limitation of \$30,000. The NYS Civil Service Commission may grant waivers under Section 211 for retired employees to be employed in positions in the classified service. The presidents of the State University of New York campuses may grant waivers under Section 211 for retired employees to be employed in positions in the unclassified service of the State University of New York, the professional service at the statutory colleges of Alfred and Cornell and the unclassified service of the community colleges. However, certain criteria must be met in order to grant a waiver under the statute. Those criteria are:

- that the retired person is duly qualified, competent and physically fit for performance of the duties of the position in which he or she is to be employed and is properly certified where such certification is required;

- that he or she will earn more than one thousand dollars in one year, including compensation earned in such position under other provisions of this article that there are not readily available for recruitment persons qualified to perform the duties of such position;
- that the prospective employer has prepared a detailed recruitment plan to fill such vacancy on a permanent basis;
- that his or her employment is in the best interests of the government service; and
- that there is an urgent need for his or her services in such position as a result of an unplanned, unpredictable and unexpected vacancy where sufficient time is not available to recruit a qualified individual and that such hiring shall be deemed as non-permanent rather than a final filling of such position; or that the prospective employer has undertaken extensive recruitment efforts to fill such vacancy and as a result thereof, has determined that there are no available non-retired persons qualified to perform the duties of such position.

The clear intent of the law is to restrict the circumstances in which an individual can simultaneously receive both a salary and a pension from New York State. This is important to avoid any appearance of impropriety. Thus, it is incumbent upon all campuses to ensure that requests for Section 211 waivers are limited to those cases where no other alternative (such as hiring a new employee or training an existing employee) is available.

Knowledgeable, retired employees are a tremendous asset to the state, and campuses are encouraged to consider ways in which these individuals provide their expertise and experience on a voluntary basis. However, the legal requirements must be complied with when hiring individuals who have previously retired from government employment.

In order to comply with the statutory requirements, before resorting to hiring a retiree pursuant to Section 211, the prospective employer must conduct a search to determine whether there are “readily available for recruitment persons qualified to perform the duties” of the position. In addition, the request that is submitted to the Civil Service Commission or the campus president must, at a minimum:

- describe the duties of the position to be filled;
- set forth the qualifications required of any individual to fill that position;
- describe the recruitment efforts which have been undertaken;
- certify that the recruitment efforts failed to locate any qualified non-retired individuals to fill the position;
- certify that the retiree is duly qualified, competent and physically fit to perform the duties of the position; and
- explain why the employment of the retiree is in the best interests of the government service, including why the position cannot be filled through the transfer or training of existing state personnel.

Under Section 211 of the Retirement and Social Security Law, such approvals may be granted for periods not exceeding two years each, provided that such person may not return to work in the same or similar position for a period of one year following retirement. As noted above, however, requests for such waivers should be made only rarely, and should be sought only for the time period that is absolutely necessary. If a request must be made to renew the employment of any individual after the completion of the two-year period, a new application with the necessary information must be submitted, and the prospective employer must again attest that no qualified persons are available for recruitment other than the retiree. A new search should be conducted before that attestation is made.

If a retiree exceeds their earning limit under Section 212 and does not receive approval under Section 211, their pension may be reduced.

Re-Employment with the Same/Different Employer – Limited vs. Unlimited Earnings

Under Section 211, retirees re-employed by the same employer from which they retired are subject to an earnings limitation. Retirees re-employed by a different employer are not subject to an earnings limitation.

For this purpose, all New York State agencies, including state-operated campuses, are considered one employer. Other entities are generally considered separate and distinct employers. For example, each school district is a separate employer. So is each local government, public authority, Board of Cooperative Educational Services, and public benefit corporation. Each community college is considered a separate

employer, except that in most cases, a community college and its sponsoring county are considered the same employer (exception: Corning and Jamestown Community Colleges are considered independent). City University of New York is considered a separate employer. Here are some examples:

- A retiree from a state-operated campus is re-employed at the same campus – earnings are limited.
- A retiree from the NYS Department of Transportation is re-employed at a state-operated campus – earnings are limited.
- A retiree from the NYS Department of Transportation is re-employed at a community college – earnings are not limited.
- A retiree from Monroe County is re-employed at Monroe Community College – earnings are limited.
- A retiree from a public school is re-employed at a University campus (state-operated or community college) – earnings are not limited.

If a retiree was primarily employed by another employer but employed on a part-time basis at a University campus, earnings will be limited if the campus employment occurred within two years of the employee's retirement date, and if the employee's pension is based in part on the campus service. Some examples:

- A retiree from a school district also taught until the date of retirement at a University campus (state-operated or community college). Anyone in this situation should have had their University service reported to TRS, so earnings are limited.
- A school district employee retired in 2001. He or she last taught at a University campus in 1999, and now wants to be re-employed by that campus. Earnings are unlimited.
- A New York City firefighter who taught on an adjunct basis at a University campus wants to be re-employed at the same campus. As the firefighter would have been in the NYC Fire Department Pension Fund, and could not possibly have participated in the University system, the earnings are unlimited.

Questions about whether a given employee's earnings are limited should be referred to the University-wide Benefits Administrator (<http://www.suny.edu/templates/SUNY/Contactus/contactform.cfm> or 518-443-5385) for ORP retirees.

Suspension of Pension Benefits

Retired members of ERS or TRS who elect to suspend their pension benefits may be re-employed without limitation and may re-join the retirement system. Members of the ORP may elect to suspend their pension benefits by discontinuing any systematic or periodic withdrawals during the period of re-employment. This will allow them to return to payroll without limitation, but they will not be allowed to re-join a retirement system, ORP members who have annuitized their contracts may not suspend their pension since an annuity cannot be stopped once it has begun.

Calculation of Earnings Limitation

When an earnings limitation applies, it is calculated as follows:

1. Determine the salary the employee would be making if he or she had not retired. To do this, take the employee's base pay as of the employee's retirement date and add any salary increases that would have been received had the employee not retired. Include across-the-board increases but not discretionary increases.

Note: If the employee was employed by two or more employers, salaries from all employers should be combined.

2. If the employee was in ERS/TRS, ask ERS/TRS to provide the final average salary.

3. Subtract the employee's highest possible pension option from item one or two (whichever is higher). In ERS/TRS, this is the option 0 amount. In the ORP, assume the employee began annuity income upon retirement and selected a single life annuity with no guaranteed period. In all cases, this figure is provided by the retirement system.
4. Round the result up to the next multiple of \$500.

Note: Sometimes ERS and TRS are not able to provide final pension figures at the time you ask. They may still be in the process of calculating the employee's pension. In that case, they will give you estimated figures. It is important to follow up in several months to request the final figures. Estimated figures will almost always be on the low side, so make sure the employee stays well under the earnings limit until you can obtain final figures.

If an employee's service will continue beyond the period specified on the original "Approval of the Employment of a Retired Employee in the Unclassified Service" (Form A – UP-211), and a new UP-211 is to be submitted, it may be necessary to contact the retirement system again to see if there are adjustments to the pension figures. ERS and TRS provide Cost of Living Adjustments (COLAs) to retirees age 62 or older and retired for five (5) or more years. If an employee might be eligible for a COLA, the retirement system should be contacted so that pension figures can be updated at the time a new UP-211 is submitted. Pension figures in the ORP are based on a hypothetical annuity starting date and do not need to be updated.

Pension Membership

Employees rehired under Sections 211 and 212 may not rejoin their previous retirement system or elect to participate in a new retirement system. They may, however, participate in a tax-deferred savings program.

Effective Date of Re-employment

There are no regulations requiring a person be off the payroll a certain amount of time before being reemployed. However, the Office of State Comptroller (OSC) will not pay a retiree a lump sum payment for unused vacation unless they are off the payroll for at least one day.

Procedures for Processing Form UP-211 for Unclassified Service Employees

UP-211s (Form A) may be approved for up to two years at a time. As the earnings limits are by calendar year, it is preferable that UP-211s be submitted by calendar year rather than academic year.

1. Determine if a UP-211 is necessary. If the employee will earn less than the Section 212 limit (\$30,000 in 2009), a UP-211 is not necessary. If the employee will earn less than the Section 212 limit with one employer, but the combined total salary with multiple employers will exceed the Section 212 limit, then a UP-211 should be completed.

If the employee is over age 65 or will turn 65 during the year in question, their earnings are unlimited under Section 212 and a UP-211 is not necessary.

2. Determine if the employee's salary is limited under Section 211. The employee's salary is limited if they are returning to work for the same employer. See Section B for explanation of same employer. If the salary is limited, the employee can only earn in post-retirement employment the difference between the salary the employee would be making had he or she not retired and the employee's highest possible pension option.

Note: Make sure the form is filled out completely. Information about final salary needs to be provided only when the salary is limited.

If the salary is not limited, the form is ready for approval by the president.

- 3. If the salary is limited, send a request to the appropriate retirement system for information. For ERS and TRS, ask them to provide the final average salary and the Option 0 pension amount. The final average salary may be used in place of the final salary if it is higher. For the Optional Retirement Program, ask the Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF) to provide a calculation of the income available from a single life annuity with no guaranteed period, effective on the date of retirement or the first day of the following month if the retirement was mid-month. In performing this calculation, TIAA-CREF is to include all ORP money (including that transferred to an Alternate Funding Vehicle), but not the employee's tax-deferred annuity contributions.

Note: if the employee is receiving a pension from two retirement systems, requests for information should be sent to both.

- 4. When information is received from the retirement system, complete the appropriate boxes on the UP-211, and calculate the Section 211 limit. It is rounded up to the next multiple of \$500. If the employee's anticipated salary is higher than the Section 211 limit, the employee's salary must be reduced to the limit. The UP-211 is now ready for the president's approval.

5. If the pension figure is "estimated," follow up to recheck with the retirement system in several months.

6. Once the form has been signed, a copy should be sent to ERS or TRS for members of those systems. For members of the ORP, a copy should be sent to the Office of Human Resources. A copy should also be sent to the employee.

Form letters are provided that you may use to request information from ERS (Form B) and TRS (Form C) as well as a form that you may use to request information from TIAA-CREF (Form D). The contacts at the retirement systems at this time are:

Supervisor, Special Calculations
NYS and Local Employees' Retirement System
110 State Street
Albany, New York 12236
Telephone 518-474-4449
Fax 518-474-3510

Benefits Examiner
Teachers Retirement System
10 Corporate Woods Drive
Albany, New York 12211
Telephone 518-447-2984
Fax 518-447-2720

Service Specialist
New York Regional Office
TIAA/CREF
730 Third Avenue
New York, New York 10017
Telephone 800-842-8412
Fax 866-259-5384

University-wide Benefits Administrator
SUNY System Administration
SUNY Plaza, 353 Broadway

Albany, NY 12246
Telephone 518-443-5385
e-mail: <http://www.suny.edu/templates/SUNY/Contactus/contactform.cfm>

For the Optional Retirement Program, requests should be sent to the Service Specialist, who will then obtain information from another unit at TIAA/CREF and forward the information back to the requesting office.

Re-employment of Classified Service Employees under Section 211

Approval of the reemployment of classified service employees under Section 211 rests with the NYS Civil Service Commission. University campuses should refer to the State Personnel Management Manual, Advisory Memorandum #99-06. Questions on procedures should be referred to the Department of Civil Service, which interprets Section 211 very strictly.

Definitions

Retiree – a person who is receiving a service retirement from ERS, TRS, or a New York City Public Retirement System. A member of the Optional Retirement Program (ORP) who separated from service at normal retirement age (55, or 50 in an incentive program) or older and has 10 years of service will be considered a retiree if they have received a retirement incentive or have begun to withdraw funds from their pension, either through annualization or cash withdrawal.

Special rules apply to persons receiving a disability pension from a retirement system. They are not covered by Sections 211 and 212. Other laws limit how much a disability pensioner may earn with the same or different employer. The rules are quite complex. When considering hiring a disability pensioner, a check should be run with the system from which they retired to determine their earnings limit before an offer is made.

Earnings – for the purpose of the earnings limit calculation, earnings are amounts actually earned in the year in question. Earnings do not include money earned in a prior year and received in the current year. Example: an employee retires on December 31, 2001. In January 2002 they receive a lump sum payment for unused vacation. That payment does not have to be included in 2002 earnings because it was earned in 2001.

In the year of retirement, earnings refer only to money earned after the date of retirement. Example: if an employee retires on September 1, 2002, only earnings for the period September – December 2002 count towards the earnings limit.

Earnings in private employment (ex: the University Research Foundation) do not count towards the earnings limit.

Earnings paid on the form entitled, "Miscellaneous Income – [Form 1099](#) Miscellaneous" (Form 1099), count towards the earnings limit.

Related Procedures

There is no related procedures relevant to this requirement.

Forms

Where applicable, this Section contains links and/or references to forms as they relate to this policy:

[Form A](#) - Approval of the Employment of a Retired Public Employee in the Unclassified Service (Form UP-211)

[Form B](#) - Letter to NYS Local and Employees' Retirement System requesting Final Average Salary and Retirement Allowance without Option

[Form C](#) - Letter to Teachers Retirement System requesting Final Average Salary and Retirement Allowance without Option

[Form D](#) - Request for Hypothetical Retirement Annuity Calculation (TIAA-CREF)

Other Related Information

The following links to FindLaw's [New York State Laws](#) are provided for users' convenience; it is not the official site for the State of New York laws.

[NYS Civil Service Law §150](#) (Suspension and annuity during public employment)

[NYS Retirement and Social Security Law §§ 211 & 212](#) (Employment of retired persons without diminution of retirement allowance) and (Employment of retired persons)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of [New York State Consolidated](#).

Appendices

There are no appendices relevant to this requirement.