

## **Policy 2.081 Guidelines on the Re-Employment of Retired Public Employees**

### **Summary**

Section 150 of the Civil Service Law of New York State provides 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 provide for exceptions to this rule. This document sets forth guidelines to assist the City University of New York (CUNY) units in complying with the New York State laws regarding the re-hiring of retired public employees.

Any retiree who is under the age of 65 and returning to active service will require a 211 waiver unless his/her annual income will be under \$30,000. CUNY retirees who return to CUNY – even with a waiver – will have their earnings limited (see Section III(B) and (C), below). Non-CUNY retirees who join CUNY will not be subject to the earnings limitation but will still require a waiver.

The documentation requirements in this policy help avoid a perception that hiring a CUNY retiree by the CUNY RF or other CUNY related entities (e.g. City University Construction Fund, CUNY related entities including foundations and auxiliary enterprises) is done solely to circumvent the earnings limitation. An example that may cause such a perception is a CUNY employee who retires and is hired by the CUNY RF without a break in service to the exact same position, department, and operating unit and makes more than the salary threshold allowed in the guidelines.

#### **I. Re-employment with Suspension of Pension Benefits**

Retired members of the New York City Employees' Retirement System (NYCERS) or the New York City Teachers' Retirement System (NYCTRS) who elect to suspend their pension benefits may be reemployed 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.

There are no regulations requiring that 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.

#### **II. Re-employment Pursuant to Section 212**

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. If a retiree works for two or more New York State public employers, the combined earnings from those positions cannot exceed the earnings limit. There is no earnings limit for persons age 65 or older. Retirees reemployed under Section 212 do not need advance approval, but must comply with the requirements of the public pension systems to which they belong. NYCTRS requires that a retiree under the age of 65 file a "Certification of Employment Under Section 212" if they return to public employment with New York City, New York State, or any of its political subdivisions under a Section 212 waiver. NYCERS requires all retirees to file a Form 353 even if the employee is over age 65 and not subject to the earnings limitation.

#### **III. Re-employment with a Section 211 Waiver**

##### **A. Waiver Requirements**

Section 211 provides a process whereby a retiree can be hired with a waiver of the Section 212 earnings limitation of \$30,000. Retirees who exceed the earnings limit under Section 212 and have not been approved for a Section 211 waiver will be subject to recoupment for any pension overpayment. The Board of Trustees of The City University of New York may grant waivers under Section 211 for retired public employees to be employed in positions in the classified or unclassified service. Such retired persons may not return to work in the same or similar position for a period of one year following retirement.

Certain criteria must, however, 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 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 or New York City public service.** Thus, it is incumbent upon all CUNY units 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.

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 Board of Trustees of the City of New York 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 that 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 personnel.

Under Section 211, such approvals may be granted for periods not exceeding two years each. 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 the position other than the retiree. A new search must be conducted before that attestation is made.

### **B. Earnings Limitations: Same vs. Different Employer**

Under Section 211, retirees re-employed by the same employer from which they retired (*i.e.*, CUNY employees returning to CUNY) are subject to an earnings limitation. This means that the combination of their pension and salary is capped (see below). Retirees re-employed by a different employer are not subject to an earnings limitation (*i.e.*, employees joining CUNY who had previously worked for non-CUNY public employers). For this purpose, The City University of New York is a single employer. All New York State, New York City agencies, and other political entities are different employers from The City University of New York. RF CUNY, City University Construction Fund, each of the Auxiliary Enterprise Corporations, and each of the CUNY Related Foundations are different employers. Notwithstanding that these related entities are separate employers, any hiring action which may create the perception that hiring a CUNY retiree by the CUNY RF or other CUNY related entities is done solely to circumvent the earnings limitation must be avoided. An example that may cause such a perception is a CUNY employee who retires and is hired by the CUNY RF without a break in service to the exact same position, department, and operating unit and makes more than the salary threshold allowed in the guidelines.

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

- A retiree from the New York City Department of Education also taught until the date of retirement at CUNY. Anyone in this situation should have had their University service reported to the New York City Teachers' Retirement System, so earnings are limited.
- An employee of the New York City Department of Education retired. He or she last taught at CUNY two years before retiring 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 CUNY wants to be re-employed at CUNY. As the firefighter would have been in the NYC Fire Department Pension Fund and thus could not have participated in the University pension system, the earnings are unlimited.

Questions about whether a given employee's earnings are limited should be referred to the Office of Human Resources Management.

### **C. Method for Calculating 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 and salary step 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 NYCERS or NYCTRS, ask NYCERS or NYCTRS to provide the final average salary.
3. Subtract the employee's highest possible pension option from either the current salary of the position from which the employee retired (*i.e.*, item #1 above) or from the employee's final average salary (*i.e.*, item #2 above), whichever is greater. In NYCERS and NYCTRS the highest possible

pension option is the option that has no reductions for payment options but includes any Cost of Living Adjustments (COLAs) for that year. In the ORP, this option assumes that the employee began annuity income upon retirement and selected a single life annuity with no guaranteed period. In all cases, the pension option figure is provided by the retirement system.

4. Round the result up to the next multiple of \$500.

Note: Sometimes NYCERS and NYCTRS are not able to provide final pension figures at the time requested. They may still be in the process of calculating the employee's pension. In that case, they will give 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 final figures are obtained.

If an employee's service will continue beyond the period specified on the original approval and a new waiver request is to be submitted, it may be necessary to contact the retirement system again to see if there are adjustments to the pension figures. NYCERS and NYCTRS may provide COLAs to retirees. 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 waiver request is submitted. Pension figures in the ORP are based on a hypothetical annuity starting date and do not need to be updated.

#### **D. Procedures for Section 211 Waivers**

Section 211 waivers may be reviewed and approved for up to two years at a time. As the earnings limits are by calendar year, it is preferable that waiver requests be submitted by calendar year rather than academic year.

The campuses should follow these procedures:

1. Determine if a 211 waiver is necessary. If the employee will earn less than the Section 212 limit (currently \$30,000), a 211 waiver 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 211 waiver form 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 Section 211 waiver is not necessary.

2. Determine if the employee's salary is limited under Section 211. Employees' salaries are limited if they are returning to work for the same employer. See Section III.B. above for an explanation of the "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.
3. If the salary is limited, follow the procedures in III.C. to determine the appropriate limitation on salary.
4. When a Section 211 waiver is required, the CUNY unit must undertake an extensive recruitment effort to fill the vacancy. If the unit determines as a result of that recruitment effort that there are no available non-retired persons qualified to perform the duties of the position, it must fill out the attached form and submit it for review to the Office of Human Resources Management (OHRM). If approved by OHRM, the Section 211 waiver request will be submitted to the Board of Trustees for

approval.

5. A copy of the fully-executed Section 211 Waiver Form should be sent to NYCERS, NYCTRS or other appropriate pension system. For members of the ORP, a copy should be sent to the Office of Human Resources Management. A copy should also be sent to the employee.

#### **IV. 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.

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#### **Definitions**

**Retiree** - a person who is receiving a service retirement from NYCERS, NYCTRS, or other New York City or New York State Public Retirement System. Members of the Optional Retirement Program (ORP) who separated from service at normal retirement age (55, or 50 in an incentive program) or older and have 10 years of service will be considered retirees 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 person with a disability retirement may earn with the same or different employer. When considering hiring a person who is receiving a disability pension, please contact the system from which the person retired to determine the applicable 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 and receives a lump sum payment for unused vacation in the succeeding January. That payment does not have to be included in the earnings for the year beginning in January because it was earned in the prior year.

In the year of retirement, earnings refer only to money earned after the date of retirement. Example: if an employee retires on August 31, only earnings for the period from September 1 through December 31 count towards the earnings limit.

Earnings in private employment 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.