



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 12

MEETING DATE: March 20, 2019

SUBJECT: Post-Retirement Employment Policy – Discussion Draft

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board approve the Discussion Draft of the revised Post-Retirement Employment Policy for dissemination to stakeholders.

PURPOSE

This item complies with the 2018-19 Strategic Management Plan goal to maintain prudent and effective policies and practices that support plan sustainability.

BACKGROUND

In 2013, the California Legislature instituted broad pension reforms with the enactment of the Public Employees' Pension Reform Act (PEPRA). These reforms imposed additional restrictions on retired members looking to return to work as retired annuitants. SCERS adopted a policy in 2015 to provide additional direction to employers and employees regarding the return-to-work rules.

DISCUSSION

As part of an ongoing effort to review and update all SCERS policies, Staff is proposing revisions to the Post-Retirement Employment Policy to ensure more consistent application of the law. Though the proposed revisions are not intended to disrupt existing practices, Staff recommends the Board provide an opportunity for employers and members to comment on the proposed changes before the policy is finalized and implemented.

This policy is intended to clarify the employer's role and SCERS' role regarding retired annuitants. While PEPRA tasked retirement boards with the ultimate enforcement of return-to-work rules, this policy emphasizes the employer's responsibility to determine the appropriateness of using retired annuitants to meet staffing needs. In drafting the policy revisions, Staff sought to balance transparency and oversight with workforce flexibility.

Major amendments to the policy include the following:

- Clarifying that retired annuitant limits apply to all types of contractors. The current policy exempts “Independent Contractor” from the retired annuitant restrictions. However, the governing statute does not differentiate between independent contractors or third-party contractors. Subdivision (b) of Section 7522.56 of the Government Code states that the return-to-work rules apply to retired members who are “employed through a contract directly by” the employer. SCERS advises retired employers and members to adhere to the 180-day wait period before returning to work and the 960-hour cap on hours, regardless of a member’s designation as an independent contractor.
- Clarifying which hours apply toward the 960-hour annual cap. This policy clarifies that hours worked, including overtime hours, are counted towards the maximum annual limit of 960 hours. However, earned credit for vacation, sick leave, or compensatory time off (CTO) if not actually worked or taken, do not apply to the 960-hour maximum limit. SCERS does not consider the hour equivalent of leave balances that are paid out upon termination as part of the 960-hour cap.
- Defining limited duration. Retired members can return to work only during an emergency to prevent a stoppage of public business or because the retired person has the skills needed to perform work of a *limited duration*. However, section 7522.56 does not define the term *limited duration*. This policy defines *limited duration* as a 36-month period.
- Establishing a process to extend the duration of retired annuitant service. This policy directs participating employers to establish an administrative approval process to grant 12-month extensions to the 36-month limited duration period. However, the policy limits the extensions to a total of an additional 24-months beyond the original 36-month period. The policy allows the employer to provide additional 12-month extensions on an annual basis to retired annuitants working in a public safety capacity, upon approval of the employer’s chief executive.
- Requiring semi-annual reports from employers. This policy requires participating employers to provide SCERS a report no less than semi-annually (by January 31 and July 31 of each year) disclosing the names of the retired annuitants who have been employed, their hours worked, their duration of retired annuitant service, and any extension to the 36-month period approved by their chief executives.
- Conforming the current enforcement penalty to the limit duration period. This policy applies the same enforcement mechanisms as the current policy. Penalties include reinstatement to active employment and suspension of the retired annuitant’s retirement benefit if the retired annuitant exceeds the 960-hour annual cap on hours worked or exceeds the limited duration period.
- Other changes have been made to simplify the policy for conciseness and readability.

Staff plans to engage stakeholders for comment and bring the policy back to the Board for final approval at the May 15, 2019 meeting.

ATTACHMENTS

- Post-Retirement Employment Policy—Discussion Draft
- Post-Retirement Employment Policy (current version)

/S/

Andrew L. Kjeldgaard
Interim General Counsel

/S/

Eric Stern
Chief Executive Officer



POST RETIREMENT EMPLOYMENT POLICY

DISCUSSION DRAFT

Revision Date: March 20, 2019	Policy Number: 011
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PURPOSE

The purpose of this policy is to clarify how Government Code section 7522.56 applies to post-retirement employment of Sacramento County Employee's Retirement System (SCERS) retired annuitants by or in service to participating SCERS employers.

POLICY

This policy is applicable to all SCERS retired members returning to work for a SCERS participating employer, including the following: an employee working through a private third-party employer providing contract services to a participating employer, an independent contractor of a participating employer, or, a direct employee of a participating employer.

Section 7522.56 defines how quickly the retiree can return to work, how much the retiree can be paid, and how many hours the retiree can work annually. The SCERS Board further determines that only hours actually worked within the calendar year or fiscal year, including overtime hours, will apply to the maximum limit of 960 hours as set forth in subdivision (d) of section 7522.56. Earned credit for vacation, sick leave, or compensatory time off (CTO) if not actually worked or taken, does not apply to the 960-hour maximum in subdivision (d).

This policy does not apply to a retired SCERS member working in private industry or for any other non-SCERS employer, so long as the employer is not providing contract services to a SCERS participating employer.

SCERS approval is not required for a SCERS retired annuitant to return to part-time work for a participating employer under section 7522.56. However, subdivision (c) of section 7522.56 states that a retired person can return to work only during an emergency to prevent a stoppage of public business or because the retired person has the skills needed to perform work of a *limited duration* [emphasis added]. This policy determines that the term *limited duration* is a period of 36 continuous months.

This policy further determines that a participating employer may provide a retired annuitant with a 12-month extension on an annual basis up to two times, for a total of an additional 24 months beyond the initial 36-month period, if each 12-month extension is approved by the participating employer's chief executive. A participating employer's chief executive may provide a retired annuitant working in a public safety capacity additional 12-month extensions on an annual basis to fulfill public safety workforce needs.

APPLICATION

It is the employer's responsibility to determine the appropriate use of retired annuitants to meet public business needs in accordance with subdivision (c) of Section 7522.56.

Participating employers shall establish an administrative process to monitor and track SCERS retired annuitants returning to part-time work, consistent with section 7522.56.

Participating employers shall provide SCERS a report no less than semi-annually (by January 31 and July 31 of each year) disclosing the names of the retired annuitants who have been employed, their hours worked, their duration of retired annuitant service, and any extensions to the 36-month period approved by the chief executive.

It is the participating employer's responsibility to monitor and manage the retired annuitant's work hours to ensure compliance with this policy and statute. Participating employers shall notify SCERS when retired annuitants have exceeded the maximum number of hours worked under Government Code section 7522.56.

Any retired annuitant who works more than the maximum number of hours provided in section 7522.56, or who works beyond the initial 36-month reemployment limited duration period with a SCERS participating employer or third-party employer providing contract services to a SCERS participating employer, other than approved extensions, may be reinstated into full membership, and SCERS may suspend the retirement benefit to such retired annuitants as provided by section 7522.56.

Such reinstatement to active employment will suspend the retired annuitant's retirement benefit until such time as he/she decides to re-retire. Upon reinstatement, the employee and employer will both be required to pay contributions (including interest) for the period of unlawful employment. Upon re-retirement, should the retiree wish to return as a retired annuitant to work for a SCERS participating employer, the return-to-work rules from section 7522.56 will again apply.

BACKGROUND

In 2013 the California Legislature instituted broad pension reforms with the enactment of the Public Employees' Pension Reform Act (PEPRA). These reforms imposed additional restrictions on retired members looking to return to work as retired annuitants.

RESPONSIBILITIES

Executive Owner: Chief Benefits Officer

POLICY HISTORY

Date	Description
3-20-2019	Staff presented Board discussion draft of revised policy for dissemination to stakeholders
08-01-2018	Renumbered from 025
12-20-2017	Board affirmed in revised policy format
06-17-2015	Board amended policy
05-06-2015	Board approved policy



POST RETIREMENT EMPLOYMENT POLICY

PURPOSE

The purpose of this policy is to outline the parameters and guidelines regarding post-retirement employment of Sacramento County Employee's Retirement System ("SCERS") retirees by employers participating in SCERS.

POLICY

SCERS retirees often seek to return to the workforce after retirement; and they are free to do so without SCERS' approval. However, depending on the retiree's new employer or the employment relationship chosen, (i.e. private industry, independent contractor, third party employer, or direct employment) how quickly the retiree can return to work and how many hours he/she can work annually may be restricted. This policy is intended to assist retirees and participating employers (PE) to assure that the post-employment relationship is in compliance with the law.

Private Industry and Non-SCERS Employers

Retirees working in private industry or for a non-SCERS employer generally pose no problems. When SCERS retirees chose to work for these post-retirement employers, it is permissible for the retiree to earn the income from that employment and continue to collect their SCERS retirement allowance. Because such employment relationships do not meet the definition of a Retired Annuitant, the Retired Annuitant restrictions discussed below do not apply.

Independent Contractor, Consultant and Contract Employment

If the retiree is employed under a direct contract with a SCERS employer as an independent contractor, consultant or contract employee, the employment is not subject to the Retired Annuitant restrictions discussed below. It should be noted, however, that the employer and Retiree should understand that the term "independent contractor" is a term of with specific legal requirements that must be met. The internal Revenue Service has issued specific guidance to assist employers in determining whether an employment relationship satisfies the definition of an independent contractor. It is strongly recommended that SCERS be contacted regarding any proposed agreement or contract before it is signed and employment is commenced.

Third-Party Employer

If a retiree is employed through a third-party employer, including the retiree's own business entity, particular attention must be paid to the characteristics of the employment relationship. These situations are typically encountered where a Retiree works for the County through an employment agency. Employment via an employment agency cannot be used in an attempt to subvert the Retired Annuitant restrictions discussed below. Upon review, should SCERS determine that the third-party employment relationship in fact constitutes a common-law employer-employee relationship, the Retired Annuitant restrictions will apply. It is strongly recommended that SCERS be contacted regarding any proposed agreement or contract before it is signed and employment is commenced.

SCERS Participating Employers

SCERS' approval is not required for employment as a Retired Annuitant. However, post-retirement employment with a SCERS PE invokes eligibility; separation and annual hour limit restrictions. SCERS and its PEs are responsible for insuring compliance with these restrictions.

APPLICATION

Retired Annuitant Eligibility

Eligibility requirements can vary depending on your situation. Eligible retirees can work for a PE contracting in SCERS (without reinstatement), if the following requirements are met:

- The retiree has specialized skills needed to perform work of limited duration or the retiree's employment is needed during an emergency to prevent stoppage of public business.
- The compensation cannot exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal an hourly rate.
- The retiree cannot have received unemployment insurance compensation during the 12-month period prior to the employment
- The retiree did not take advantage of an employer incentive to retire. If so, then the retiree must wait 180 days after retirement to begin working as a Retired Annuitant.
- The retiree cannot return to a position from which he/she is receiving a disability retirement benefit.

Separation – 60/180- Day Wait Period

A SCERS retiree cannot be employed by a SCERS PE for a period of 180 days after his/her retirement. The 180-day waiting period starts from the date of retirement.

There are two exceptions to the 180-day waiting period: (1) The retiree is a retired firefighter or retired public safety officer (peace officer) who will perform firefighter or peace officer retired annuitant work; or (2) The public agency or governing body adopts a resolution passed in a public meeting, that approves the employment in which the employer has certified the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed. The appointment may not be placed on a consent calendar.

The 180–day waiting period applies without exception if the Retired Annuitant received a Golden Handshake or any other retirement incentive. It is recommended that a PE or retiree contact SCERS prior to commencement of employment regarding any questions about whether the retiree received a retirement incentive.

All retirees that retire for service must meet the bona fide separation in service requirement even if an exception to the 180-day wait period applies. Based on plan qualification requirements set forth by the Internal Revenue Service (and independent of the CERL and PEPRA requirements) SCERS established a bona fide separation in service period of sixty (60) days. This means that even if the retiree is a safety member or comes back to work via resolution, the retiree must demonstrate a bona fide separation in service period of 60 days.

Hours Limit- 960 Hours Per Year

Retired Annuitants are permitted to work up to 960 paid hours per calendar/fiscal year for their SCERS' employers in aggregate. This means that any hour worked for any SCERS employer in a calendar year by a Retired Annuitant counts against the 960-hour limit. Apart from the 960-hour annual limit, the law does not prescribe the type or categorization of compensation that may be paid to a Retired Annuitant, such as overtime, vacation or compensated time off. Should a Retired Annuitant work an overtime hour, it will count as one hour towards the 960-hour annual limit. Participating Employers have been free, therefore, to pay a Retired Annuitant for accrued leave in the form of a termination of employment payout if they deemed it necessary and appropriate. In certain cases, Participating Employers were not including such terminal payments in the calculation of the 960-hour annual limit. In light of the changes made by PEPRA, since such compensation is directly related to the hours worked by the Retired Annuitant, should a Participating Employer elect to provide such compensation, going forward it will be included in the calculation of the 960 hour annual limit, subject to the following exception: If a Participating Employer certifies that, prior to the effective date of this Policy, it was providing such compensation and was not including it in the calculation of the 960 hour annual limit, and that such a practice is necessary to the continued use of Retired Annuitants to meet its limited duration employment needs, that employer may continue its current practice. On an annual basis, such an employer must provide SCERS with information regarding the levels paid of such compensation. After the effective date of the Policy, if a Participating

Employer other than one that qualifies under the noted exception elects to provide such compensation, it must advise SCERS of this practice and attest that such compensation will be included in the calculation of the 960 hour annual limit.

Once the 960-hour limit has been reached, the Retired Annuitant is not permitted to receive any additional compensation from the employer for the remainder of the calendar/fiscal year. Should a Retired Annuitant work more than 960 hours, any compensation received for work performed in excess of 960 hours must be returned to the employer or the Retired Annuitant risks having their retirement benefit suspended and being reinstated to active employment.

Limited Duration Appointment

Under the law, post-retirement employment of a SCERS retiree by a participating SCERS employer is structured as being permissive, within certain rules and limitations. As noted above, a Retired Annuitant may be employed if the retiree has special skills needed to perform work of limited duration or is needed during an emergency to prevent stoppage of public business. This reflects a public policy determination that in such situations it is in the interests of the employer and the public to employ a Retired Annuitant, and thus it is permissible for the Retired Annuitant to receive pay in addition to his/her retirement benefit. Participating Employers and Retired Annuitants should be cognizant that an extended employment relationship with a Retired Annuitant may be determined to be regular, part-time employment that could subject the Retired Annuitant to reinstatement to regular employment as described below.

Monitoring

Each PE shall prepare and submit to SCERS a quarterly report that identifies the Retired Annuitants employed and the number of hours worked at the time of the reports preparation.

Reinstatement

The CERL provides for the reemployment, reinstatement to active membership, payment of contributions and discontinuance of retirement allowance in certain circumstances. Post-Retirement employment which fails to meet the requirement set forth in PEPRA and the CERL is considered unlawful employment and warrants the remedy of reinstatement of the Retired Annuitant to active membership.

Consequences of Unlawful Employment

Potential remedies for violation of the 180-day waiting period include, but are not limited to, the following:

The employer can certify in a request to its governing body that the nature of the employment is necessary to fill a critically needed position before the 180-day separation period has passed. The appointment must then be approved by the governing body in a public meeting.

SCERS can reinstate the retiree to active employment and suspend his/her retirement benefit until such time as he/she decides to re-retire. Upon reinstatement, the employee and employer will both be required to pay contributions (including interest) for the period of unlawful employment. Upon re-retirement, should the retiree wish to return as a Retired Annuitant, the 180-day clock would start again effective with the new retirement date.

The retiree can return any compensation received to the employer and remain unemployed by any SCERS Participating Employer until 180 days has elapsed since his/her retirement date.

Similarly, violation of the 960-hour annual work limit will result in unlawful employment. Remedies for this violation include, but are not limited to, the following:

SCERS can reinstate the retiree to active employment and suspend his/her retirement benefit until such time as he/she decides to re-retire. Upon reinstatement, the employee and employer will both be required to pay contribution (including interest) for the period of unlawful employment. Upon re-retirement, should the retiree wish to return as a Retired Annuitant, the 960-hour annual limit would be in effect.

The retiree can return to the employer any compensation received for hours worked in excess of the 960-hour limit and remain unemployed until the expiration of the calendar year. At which time the Retired Annuitant could begin working for another 960 hours in any subsequent year.

The employer's utilization of Retired Annuitants, the policies establishing use and compliance with state and federal laws governing the employment relationship are all subject to monitoring, audit and penalties, in the event of violation.

BACKGROUND

In 2013 the California State Legislature instituted broad pension reforms with the enactment of the Public Employees' Pension Reform Act (PEPRA). These reforms imposed additional restrictions on retirees looking to return to work as Retired Annuitants. A Retired Annuitant is defined as a retiree who is hired by his or her former employer or by another Participating Employer (PE) in the same retirement system as the former employer; in other words, a SCERS retiree going back to work for a SCERS PE. PEPRA also shifted the oversight responsibilities to public pension plans in several new areas. With respect to Retired Annuitants, PEPRA has transformed what has traditionally been an employer oversight function and melded it into a shared auditing, monitoring and oversight function between the employer and the public pension plan. Retirees and PEs need to be cognizant of this change and the additional restrictions imposed on each of them when a SCERS retiree seeks re-employment; otherwise the SCERS retiree risks jeopardizing his/her retirement benefits.

RESPONSIBILITIES

Executive Owner: Chief Benefits Officer

POLICY HISTORY

Date	Description
08-01-2018	Renumbered from 025
12-20-2017	Board affirmed in revised policy format
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