



# **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
06-17-2015	Board amended policy
05-06-2015	Board approved policy