

## Re-employment of Retired Public Employees

### POLICY & PROCEDURES

#### Background

The Retirement and Social Security Law (RSSL) regulates employment of public retirees within New York State (NYS). Sections 211 and 212 of the RSSL regulate the public re-employment of retirees under age 65 *receiving retirement benefits* from a public retirement system within NYS. The intent of the law is to restrict the circumstances in which an individual can simultaneously receive a salary and a pension from NYS.

#### Applicability

Section 212 allows retired State or Local government employees under age 65 to collectively earn up to an earnings limitation (\$30,000) on a calendar year basis from public re-employment, and continue to receive full pension benefits. If a retiree exceeds his/her earning limit under section 212 without approval under section 211, retirement benefits may be reduced, suspended, or result in repayment obligation.

Section 211 provides a temporary, limited waiver to the section 212 earnings limitation amount only when the re-employment of the public retiree is absolutely necessary, and no other alternative (i.e., hiring a non-retiree or training an existing employee) is available. Further, retirees may not return to work in the same or similar position for a period of one year following retirement.

Public retirees receiving a disability retirement benefit are not covered by sections 211 and 212; other laws limit how much a disability retiree may earn with a public employer.

#### Responsibilities

Departments are responsible for justifying the hire of a public retiree *before* a retiree is hired if the retiree will earn in excess of the Section 212 limitation, in accordance with the legislation. Pre-employment documents provide the opportunity for the retiree to identify retiree status prior to employment.

Retirees are responsible for identifying their retiree status and requesting a waiver when appropriate. Retirees are made aware of this legislation by their retirement system. All public retirees must submit an RSSL Acknowledgement form before employment, once they identify their retiree status.

The Office of Human Resources is responsible for providing the guidelines of this legislation to appropriate parties, including the President, Vice Presidents (as appropriate), Deans and Department Chairs. This office prepares the waivers for Presidential approval when the RSSL criteria are met, and keeps records of active waivers. This office also ensures that all postings are broadly disseminated in order to attract as broad and diverse an applicant pool as possible.

#### Policy

(based on SUNY policy 8004, available online at [www.suny.edu/sunypp/documents.cfm?doc\\_id=572](http://www.suny.edu/sunypp/documents.cfm?doc_id=572))

Before resorting to hiring a public retiree to earn in excess of the Section 212 limitation and issuing a waiver, a search **must** be done to determine whether there are "readily available for recruitment persons qualified to perform the duties" of the position. Waivers will not be granted without a search having first been done. If a qualified non-retiree applies for the position, the law **requires** the University to choose the non-retiree over the retiree. All public retirees must submit an RSSL Acknowledgement form before employment, once they identify their retiree status.

Re-employment of a public retiree within NYS is temporary. Tenure-track positions will not be offered to public retirees, so as not to imply permanence of appointment.

In accordance with the RSSL, sufficient justification to grant a waiver must be provided prior to employment offer.

Waiver recipients must not be granted additional service. Waiver recipients must not participate in hiring determinations.

Waiver recipients must train a non-retiree coworker where applicable so the position may be assumed by a non-retiree after the expiration of the waiver. Training direction must be given by the Department Head and assigned as part of the employment obligation.

If granted, waivers will be for one year only, and must be in place before their effective dates. Waivers must not be granted to retirees in the same or a similar position within one year of retirement.

## **Procedure**

(based on SUNY policy 8004, available online at [www.suny.edu/sunypp/documents.cfm?doc\\_id=572](http://www.suny.edu/sunypp/documents.cfm?doc_id=572))

Departments must report the presence of a public retiree in a candidate pool to the Office of Human Resources. This will be identified early on in the screening process so departments will employ the RSSL standards in assessing the candidates before interviewing further and before offer of employment is made, as applicable.

Minimum Qualifications set forth in job descriptions and postings must accurately define ALL necessary qualifications for the job, and "preferred" or "additional" qualifications must be posted as necessary qualifications if they are truly necessary to perform the job.

Department Heads must justify the hire of a public retiree as follows, and submit such justification to the Office of Human Resources with a completed and signed Justification Checklist. Justification must include:

- Description of the duties of the position
- Description of the qualifications required of an individual to fill the position
- Description of the recruitment efforts which have been undertaken
- Certification that the retiree is duly certified, qualified, competent, and physically fit to perform the duties of the position
- Explanation why the employment of the retiree is in the best interests of the College, including why the position cannot be filled through the transfer or training of existing State personnel
- Certification that the hire is a non-permanent filling of the position
- Certification that the campus has taken extensive recruitment efforts and as a result has determined that there are no available non-retired persons qualified to perform the duties of the position or that there is an urgent need for his or her services as a result of an unplanned, unpredictable and unexpected vacancy where sufficient time is not available to recruit a qualified individual
- Preparation of a detailed recruitment plan to fill the vacancy held by the retiree on a permanent basis

## **Penalties**

Retirees' retirement benefits can be reduced, recalculated, or require repayment if earnings are in excess of the limitation. Campuses will be audited for compliance with the NYS Retirement and Social Security Law (RSSL).