



New York State Teachers' Retirement System

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SUBJECT:

*Earnings from New
York Public
Employment after
Retirement*

TO: Chief School Administrators
College and University Presidents
School Principals

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Earnings from New York Public Employment after Retirement and Its Impact on the Continued Receipt of Service Retirement Benefits from NYSTRS

This Bulletin provides guidance on how the continuing receipt of *service retirement benefits* by a retiree of the New York State Teachers' Retirement System can be affected if the retiree has earnings from public employment in New York after retirement.¹ It addresses the general prohibition in New York law against the simultaneous receipt of service retirement benefits from the System and of earnings from services performed for public employers within New York State. It also discusses the exceptions provided under New York law for employment of retirees of the System by public employers without the loss of their retirement benefits. Finally, it discusses the reporting obligations of retirees and employers when NYSTRS retirees are providing services to NYSTRS employers.

Executive Summary

New York law restricts what a NYSTRS service retiree may earn from providing services to a New York public employer after retirement. The System is obligated by law to suspend a retiree's benefit whenever a retiree provides compensated services to a public employer in New York, unless one of the following exceptions allows for the continued receipt of retirement benefits:

- Earnings from temporary or occasional public employment amounting to less than \$27,500 in a calendar year (unless or until otherwise amended by the New York State Legislature);
- Earnings by a retiree who has attained age 65;
- Earnings from employment approved under Section 211 of the Retirement and Social Security Law; or,
- Earnings as a bona fide consultant by a retiree with a date of membership prior to May 31, 1973.

¹ System retirees receiving *disability retirement benefits* are subject to a separate set of rules, the discussion of which is beyond the scope of this Bulletin. If a disability retiree is considering or is being considered for employment by an employer, the System's Disability Unit should be consulted regarding the impact that employment may have on the disability retiree's continuing receipt of retirement benefits.

In the System's experience, most NYSTRS retirees do not want to return to public employment in New York unless they can continue to enjoy their retirement benefits. *It is, therefore, critical for retirees that their employment properly falls within one of these exceptions in law so that they can continue to receive their retirement benefits while having earnings from public employment.* These exceptions are discussed in detail within this Bulletin.

The Exceptions in Law Which Permit the Continued Receipt of Retirement Benefits

The following are the most-relevant exceptions to the prohibition against receipt of retirement benefits while engaging in compensated public employment in New York.²

Earnings from Temporary or Occasional Public Employment (RSSL §212) — Section 212 of the Retirement and Social Security Law allows a retiree to earn up to a limited amount in a given calendar year from *temporary* or *occasional* public employment without loss of service retirement benefits.

- This exception does not apply to full-time contractual employment.
- The limit for a given calendar year is established by the New York Legislature. The most-recent amendment to Section 212 has established a limit of \$27,500 on earnings during calendar year 2004 and any succeeding calendar year.
- Any increases in the earnings limitation made by any future legislation will be posted on the System's Web site (www.nystrs.org).
- A retiree's earnings under this exception must be reported to the Retirement System by NYSTRS participating employers on their employer reports. (If a retiree works for a New York public employer which does not participate in NYSTRS, the retiree must report his/her earnings to NYSTRS on form RMS-64.1.)
- Retirees who earn an amount in excess of the Section 212 limit in a given calendar year must be employed under another exception. If not, their retirement benefits must be suspended for the period during which the excess amounts were earned.
- Employment permitted under this exception does not require the receipt of any prior approvals.

Earnings by a Retiree Who Has Attained Age 65 (RSSL §212) — Section 212 of the Retirement and Social Security Law also allows any retiree to have unlimited earnings from public employment without loss of service retirement benefits, commencing in the calendar year in which the retiree attains age 65.³

- As in the case of earnings from temporary or occasional employment, a retiree's earnings under this exception must be reported to the Retirement System by NYSTRS participating employers on their employer reports, or by the retiree if employment is with a public employer which does not participate in NYSTRS.
- Employment permitted under this exception does not require the receipt of any prior approvals.

² There are a few other limited situations in which a retiree's benefit would not be suspended, such where the retiree is elected to certain elective offices, but these are so rarely encountered by NYSTRS that they have not been discussed here. Any questions on this should be referred to NYSTRS staff.

³ For example, if a retiree attains age 65 in June 2006, the retiree may earn an unlimited amount throughout calendar year 2006 without any suspension or loss of benefits. The exception applies from the beginning of the calendar year even though the retiree only becomes age 65 in June of that year.

Earnings from Approved Employment (RSSL §211) — Section 211 of the Retirement and Social Security Law allows retirees to work for a New York public employer without loss of service retirement benefits, *provided the employer applies for and receives approval under Section 211 for the employment.*

- If the approved employment is with an employer *other than a previous employer*, the retiree's earnings are **not** limited.
- If the approved employment is with an employer for whom the retiree worked within two years before retirement and the salaries were used in the benefit calculation, the retiree's earnings **will be limited**. In such cases, the retiree may not receive any more than the difference between the retiree's final average salary (or, if greater, the salary the retiree would now be receiving had s/he continued in service) and the retiree's maximum retirement benefit.⁴
- As in the case of the previous two exceptions, earnings under this exception must be reported by employers to NYSTRS on their employer reports, or by the retiree if employment is with a public employer which does not participate in NYSTRS.
- The State Education Department (SED) requires a retiree to have been retired for at least six months before the retiree may return to work under Section 211 and approvals are given for one year periods, not to exceed two years in total.

Earnings from Services Performed as a Consultant (i.e., Independent Contractor) — New York law allows retirees **with a date of membership prior to May 31, 1973** to have unlimited earnings from services rendered as a consultant without loss of service retirement benefits.

- Retirees seeking to claim the benefit of this exception must be working as *bona fide* independent contractors to the employer, rather than as employees. In other words, this exception only applies if the retiree is performing consultant-type work. *This exception does not apply if the retiree is performing a function ordinarily performed by a teacher or administrator or where the arrangement fails to satisfy the common law definition of the independent contractor relationship.*
- *This exception does not apply to retirees with a date of membership on or after May 31, 1973 (including all Tier 2, 3 and 4 retirees).*
- *The agreement under which the retiree is employed as a consultant must be submitted to NYSTRS prior to the commencement of services so that NYSTRS has the opportunity to determine whether the retiree will, in fact, be serving as a consultant and is entitled to claim this exception.*
- *Provided NYSTRS has determined the relationship is a bona fide consulting arrangement*, there is no limitation on the earnings of the retiree under the arrangement and any earnings of the retiree under that arrangement are **not** to be included on NYSTRS employer reports.

⁴ This rule applies even where the retiree rendered teaching service with the employer prior to retirement on a very limited or part-time basis. The System is required to include the compensation earned from that service in the calculation of the retiree's benefit and returning to that employer after retirement will trigger the limitation.

A failure to submit a consultancy agreement to NYSTRS for its review or a determination that the exception does apply could result in a substantial loss of benefits to the retiree. Both the employer and the retiree have the obligation to make sure that the consulting agreement and other required information have been provided to NYSTRS and have the burden of showing that it is a bona fide consulting arrangement, rather than an employment relationship. In order for NYSTRS to determine whether the exception applies, the following information must be submitted to NYSTRS:

- (1) A statement describing the specific work or project, including the duties and responsibilities of the retiree under the arrangement;
- (2) The name and title of the person or persons to whom the retiree is to report;
- (3) A copy of the contract or agreement under which the retiree is to render services to the employer;
- (4) A copy of the Board minutes (if the employer is a school district) approving the agreement; and,
- (5) A statement as to how payment will be made (e.g., on regular payroll with or without standard deductions, by voucher, etc.).

NYSTRS has the statutory authority to require the submission of any and all records, and other information it may deem necessary in connection with its review; failure to honor NYSTRS' request could result in an adverse determination by NYSTRS.

Even if a retiree may be characterized or described as a “consultant” or an “independent contractor” in employer documentation, such as the contract or Board minutes, that is not binding on NYSTRS and does not necessarily require NYSTRS to accept the characterization or description. Moreover, the fact that the retiree may be ostensibly employed by a third-party individual or entity, rather than directly by the employer, does not mean this exception applies and the retiree has the right to have earnings without loss of retirement benefits. Such arrangements, like direct arrangements with the employer, must be reported to NYSTRS. If NYSTRS is not satisfied that an exception applies, the retiree’s benefit must be suspended during the period in which the retiree is rendering services under the arrangement.

The Substantial Adverse Consequences If a Retiree Has Earnings from Public Employment but Fails to Qualify Under an Exception Permitting Such Earnings Without Loss of Benefits

Unless a retiree’s earnings come under one of the exceptions discussed above, the retiree’s retirement benefits must be suspended or reduced.

- If a retiree is working for a public employer within New York on a regular basis, the retiree’s benefit must be suspended effective the first day of such regular employment. Thus, if the retiree received any benefit during the period of such employment, that benefit must be repaid to NYSTRS.
- If a retiree has had temporary or occasional employment coming under Section 212 but has exceeded the Section 212 earnings limitation for the calendar year, the retiree’s benefit must be suspended for the period during which the excess amount is earned. If the retiree received benefits while the earnings limitation was exceeded, those benefits must be repaid to NYSTRS.

In other words, a suspension of retirement benefits because of a failure or inability to come under one of the exceptions discussed above could result in a loss of a substantial amount of money to the retiree.⁵

Because of the potentially serious adverse consequences to a retiree if the requirements of law are not observed, employers are urged to communicate with NYSTRS whenever there is any question or uncertainty about the impact of employment on a NYSTRS retiree's benefits. You may call 800-356-3128, Ext. 6250.

Employers are also urged to refer NYSTRS retirees to the publication *Working in Retirement: Earnings Limits and Their Effect On Your NYSTRS Retirement Benefit*. The pamphlet is available on the Publications page of NYSTRS' Web site (www.nystrs.org) or by calling the number above and requesting a copy.

⁵ Some retirees may wish, for any number of reasons, to return to full-time or close to full-time public employment rather than remaining retired. For these retirees, the suspension of their retirement benefit during their return to public employment is simply one of the conditions of their return. Retirees returning to teaching service with an employer participating in NYSTRS may have the opportunity or may be required to rejoin the System and may be able to earn additional benefits for their public service following retirement.