



NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
10 Corporate Woods Drive, Albany, NY 12211-2395

GUIDELINES TO ASSIST REPORTABILITY FOR CONSULTANTS, INDEPENDENT CONTRACTORS AND CASUAL EMPLOYEES

Part 1

1. Is the person providing educational instruction to children? Yes No
2. Is the person performing a substantial portion of the duties of a full-time school administrator? Yes No

If the answer to question 1 or 2 is *YES*, this person would be considered a **regular employee** and the service/salary is reportable to NYSTRS. If you answered *NO* to both of the above questions, please continue.

Part 2

1. Is the person scheduled to work fewer than 20 days? Yes No
2. Is the person performing the same duties for multiple districts? Yes No
3. Is the person responsible for his or her own work materials and/or setting his or her own work schedule? Yes No
4. Is the pay rate higher than the pay rate of full-time employees under contract? Yes No
5. Is there a special level of knowledge or skill required for this position? Yes No

If you answered *YES* to three or more questions in Part 2, the person would be considered a consultant.* If you answered *YES* to fewer than three questions in Part 2 and have questions, please call (800) 348-7298, Ext. 2908.

For Active NYSTRS Members

- If it is determined that the individual is a consultant, the earnings and service resulting from the duties above would not be reportable.

For All NYSTRS Retirees

- The earnings and service should be reported as post-retirement pay.
- Districts must submit all consultant agreements to NYSTRS' Retired Member Services Unit **prior** to the agreements taking effect, or as soon as they are signed. Failure to do so may result in a substantial loss of a retiree's pension benefits.

*For all NYSTRS retirees, a final determination will be issued once the consultant agreement is reviewed by the Retirement System.

Glossary

Casual Employee — The term “casual employee” is defined differently among employers. Use these *Guidelines* to determine if the earnings and service of your casual employee(s) are reportable to NYSTRS.

Consultant — NYSTRS defines a consultant as someone who is not an employee of the district. For NYSTRS active members, earnings and service resulting from consultant duties are not reportable to the System, and consequently, are not usable in any benefit calculation.

Not Reportable — Earnings or service that should not be reported to NYSTRS via employer reports.

Post-Retirement Pay — Money earned and paid to a member who has previously retired from a NYS public retirement system.

FOR ALL NYSTRS RETIREES:

Consultant Agreements — If the System does not approve the consultant agreement or an employee falls into category “2.” noted below, the employee’s earnings in retirement will be limited by Sections 212 and 211 of the Retirement and Social Security Law.

1. A retiree whose date of membership is **before** May 31, 1973, **with** a consultant agreement approved by NYSTRS, may have unlimited earnings.
2. A retiree whose date of membership is **on or after** May 31, 1973, is subject to the Section 212 or 211 earnings limit even if the employer considers him or her a consultant and NYSTRS approved the consultant agreement.

Section 212

Most retirees under age 65 who work in public employment in retirement meet the provisions of this section of law. Under Section 212, retirees may return to New York State public employment on a temporary or occasional basis (not full-time contractual employment) and earn a designated amount per calendar year, as established by the State Legislature. For the current limit, visit the Retirees page of the System’s Web site (www.nystrs.org).

Section 211

Retirees who **plan** to earn **more than the Section 212 limit** within a calendar year can work under Section 211 **with approval** from whichever entity has jurisdiction over their employment. If continuing work in education, the approval would be required from the Commissioner of Education. **The employer must initiate the approval.**

Third-Party Employment

Retirees hired and paid by a private agency to fill a position on an interim basis with a New York State public school or other New York State public employer may be subject to the earnings provisions of Sections 212 and 211 noted above. It is the participating employer’s responsibility to report to NYSTRS any monies earned by a retiree as post-retirement pay, even if paid to a third-party employer. Retirees employed via a third party should be instructed to contact NYSTRS to determine the possible impact on their retirement benefit.

Unlimited Earnings

Retirees can have unlimited earnings in the following types of employment: private, out-of-state, federal government, holding elected public office in New York State, working as a consultant for a public employer if their date of membership is prior to May 31, 1973 (**all contracts must be reviewed by NYSTRS before employment begins**), or all employment beginning in the calendar year in which the retiree turns age 65.

Additional specifics can be found in Administrative Bulletin 2007-3 and in our pamphlet *Working in Retirement*. Both are available at www.nystrs.org.