

**New York State Teachers' Retirement System**

To: Chief School Administrators
College and University Presidents
District Contacts
Employer Secure Area Contacts

Administrative Bulletin*Issue No. 2018-1**January 2018***Public Employee Earnings in Retirement: Reporting and Limitations**

The hiring of a retired New York State public employee (which includes those receiving a NYSTRS retirement benefit) comes with restrictions both on the part of the employer and the employee. The purpose of this bulletin is to generally clarify the rules in place regarding earnings in retirement; however, it is not intended to cover all possible scenarios.

Reporting a Retired Member's Earnings

Earnings of all retired employees who receive a NYSTRS pension, no matter the capacity in which they are employed, must be reported to NYSTRS. The most common earnings reportable to NYSTRS include those paid on regular payroll, whether full-time, part-time or temporary. Employers need to report these payments under NYSTRS Pay Type N: MTD Post-Retirement Pay.

NYSTRS retirees working in your district and receiving compensation from a source other than your district payroll must also be reported to NYSTRS. Other compensation paid to retirees would include those paid:

- as consultants (whether or not a 1099-MISC was issued);
- by voucher;
- through accounts payable;
- from other New York State funds, such as grants;
- through a business entity (i.e., LLC, S-Corp, Partnership, etc.); or,
- through a third-party vendor.

For any employment compensation that is not confirmed by your payroll records, you are required pursuant to Retirement and Social Security Law (RSSL) Section 217 to send a notice on a calendar year basis to NYSTRS including all the following information:

- Name of the retiree
- Social Security number
- Date of birth
- Place of employment
- Gross earnings paid
- Position(s) employed

Please note that earnings reportable to another retirement system must also be reported to NYSTRS. Use the NYSTRS Pay Type M: MTD Non-NYSTRS Pay field on your monthly employer report for these earnings.

Earnings Limitations

Retired New York State public employees working in retirement may earn **up to \$30,000 in each calendar year** from public employment within the state, pursuant to RSSL Section 212, without impacting his/her retirement benefit.

*Administrative Bulletins dating from 2005 to the present are available on our website at **NYSTRS.org**. Select Employers and visit the Administrative Bulletins page.*

Upon exceeding the \$30,000 limitation in a given calendar year, NYSTRS will suspend the retiree's pension benefit for the remainder of the calendar year if the retiree continues his/her public employment. Note that these earnings limitations apply even if the public employer contracts with a private, third-party entity to hire the retiree.

The earnings limitation may be increased for NYS public employees who return to public employment under the following scenarios:

1. A waiver is obtained from the appropriate entity with jurisdiction over the employment, pursuant to RSSL Section 211. Depending on the position to be filled, a waiver may be requested from one of the following entities: New York State Department of Education; Chancellor of the New York City Department of Education; Trustees of the City University of New York; a SUNY or community college president; and the New York State or New York City Civil Service Commission. New York State public retirement systems do not grant these waivers. Waivers cannot be granted for a period exceeding two years.
 - a. If the retiree is returning to the service of a former employer with a waiver, the member's earnings in a calendar year are **limited to the difference between the member's final average salary (or, if greater, his/her final salary) and the member's maximum retirement benefit**.
 - OR
 - b. If the retiree is NOT returning to the service of a former employer with a waiver, the member's earnings in a calendar year are **unlimited**.

A "former employer" is defined as an employer participating in a state retirement system which directly paid the salary or compensation of a retired person at any time during the two years immediately preceding the member's retirement and who paid the salary on which the retiree's retirement allowance is based.

2. Retired public employees may have **unlimited** earnings in retirement in certain circumstances, including the following cases:
 - All employment beginning in the calendar year the member turns 65.
 - The retiree has suspended his/her retirement benefit.
 - Working as a consultant for a New York State public employer, if the date of membership is prior to May 31, 1973 and the contract has been received and reviewed by NYSTRS.
 - Private or federal employment.
 - Public employment outside of New York State.

Prohibitions

All retired NYSTRS members under age 65 **are prohibited** from returning to work in any public school district in the same or substantially similar position for a period of one year following retirement, unless:

- The retiree's earnings will be below the Section 212 earnings limitation.
- OR
- The retiree suspends his/her benefit while employed.

Members Retired for Disability

System retirees receiving disability retirement benefits are subject to a separate set of rules not discussed in this bulletin. If a disability retiree is considering, or is being considered for, employment, the System's Disability Unit should be consulted regarding the impact that employment may have on the disability retiree's retirement benefit.

Please call our Retired Member Services Unit at (800) 348-7298, Ext. 6150 if you have any questions on this topic.