



## **Section 20: Earnings After Retirement**

### **Introduction**

New York state public retirees may be employed by participating employers of NYSTRS under certain conditions. Different regulations apply to service and disability retirees and to retirees of other New York state public retirement systems. We suggest you familiarize yourself with the information contained here, as well as information available from other affected retirement systems, before hiring a retired public employee since the retiree's pension could be negatively affected.

### **Reporting a Retired Member's Earnings**

Earnings of all retired employees who receive a NYSTRS pension, no matter in what capacity they are employed, must be reported to NYSTRS by both the employer and the retiree.

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 (including earnings reportable to another retirement system) on their monthly report. Please refer to **Section 2** or **Section 3** of this Employer Manual for more specific information on the reporting of retirees. To determine if an individual is a NYSTRS retiree, use the Membership Verification feature in the Employer Secure Area (ESA).

NYSTRS retirees working in your district and receiving compensation from a source other than your district payroll must be reported to NYSTRS through the Earnings After Retirement application in ESA. This includes retirees 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.).
- Through a third-party vendor.

To determine if an individual receiving these types of payments must be reported to NYSTRS, use the Earnings After Retirement > Add New Retiree page in ESA. For complete instructions, please see the **Earnings After Retirement Instructions**.

Districts are not billed on earnings for retirees working in retirement under Section 212 or 211 of NYS law.



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#### Employees Retired for Service

Retirees of New York state public retirement systems who are receiving a service retirement allowance may have unlimited earnings in retirement in certain circumstances, including the following cases:

- All employment (including public employment) beginning in the calendar year the retiree turns 65.
- The retiree has suspended their retirement benefit.
- Work as a consultant for a New York state public employer only if the retiree's date of membership is prior to May 31, 1973 **and** the consultant agreement has been reviewed and approved by NYSTRS.
- Private sector employment that does **not** include services to any NYS public employer. (*Employment for a business providing services to a NYS public employer is considered public employment. These earnings **must** be reported to NYSTRS and earnings limits may apply.*)
- Federal employment.
- Public employment in another state.
- Work as an elected official, inspector of elections, poll or ballot clerk, commissioner of deeds, juror, or notary public – provided the retiree was elected or appointed to an elected position they did not hold prior to retirement.

Service retirees who do not meet the criteria for unlimited earnings may return to public employment under Section 211 or 212 of Article 7 of the New York State Retirement and Social Security Law. Members intending to return to New York state public employment immediately after retirement must first resign from their employment and have a break in service of at least one business day (holidays and weekends do **not** count toward this break in service).

Service retirees collecting a benefit from a New York state public retirement system are not eligible to join another New York state public retirement system unless their pension is suspended.

#### Section 212

Retirees employed under Section 212 are allowed to earn up to a specific amount each calendar year from all types of New York state public employment. The Section 212 earnings limit, determined by the state Legislature, is \$35,000 for the 2020 calendar year and subsequent years. Note that these earnings limitations apply even if the public employer contracts with a private, third-party entity to hire the retiree.

If a retiree exceeds the annual limit, NYSTRS will suspend the retiree's pension benefit for the remainder of the calendar year. The retiree will also be required to repay NYSTRS any pension benefits received after exceeding the limit. If the retiree stops working in public service and provides written confirmation that they have stopped for the remainder of the calendar year, their pension can be reactivated.



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If a retiree working in your district exceeds the earnings limit in a calendar year, you will need to complete the **Retiree Earnings Verification (RMS-99)** form, also available in the Employer > Employer Forms section of our website at NYSTRS.org.

### Section 211

Retirees who anticipate earnings in excess of the Section 212 limit may be employed under Section 211. This type of employment requires the employer to receive permission for an earnings waiver from whichever entity has jurisdiction over the retiree's employment. 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 waivers.

Waivers generally will not be granted to retirees seeking to return to the same or similar position within one year of retirement, and waivers will be limited to one year and can only be renewed once except in extreme instances. To obtain a waiver, the employer must demonstrate that there is an urgent need for the retiree's services or that there are no available, qualified non-retired persons to fill the position.

Earnings under Section 211 may be limited or unlimited as follows:

Under Section 211, if a retiree is returning to work with a waiver for a **former employer**, the retiree's earnings in a calendar year are **limited** to the difference between the retiree's final average salary (or the salary the retiree would be earning had they not retired, if greater) and the retiree's Maximum retirement benefit. A "former employer" is defined as an employer participating in a state retirement system which directly paid the salary or compensation of a member at any time during the two years immediately preceding the member's retirement and that salary was used in the calculation of the member's final average salary. Retirees cannot renounce previously reported earnings to achieve an unlimited status.

If a retiree with a waiver is returning to work for an employer **other than their former employer**, the retiree may earn **unlimited** earnings without any effect on their pension benefit.

Retirees employed under Section 211 should be included on your employer report. Specific instructions are available in **Section 2** of this manual for school districts and **Section 3** for colleges. If a retiree working in your district under a limited waiver exceeds the earnings limit in a calendar year, you will need to complete the **Retiree Earnings Verification (RMS-99)** form, also available in the Employer > Employer Forms section of our website at NYSTRS.org.

### Suspending a Pension

Retirees who want to have unlimited earnings without obtaining a waiver may suspend their retirement benefit. Once the benefit is suspended, the retiree has up to one year to rejoin NYSTRS. In the second year after suspending, membership is mandatory. The membership tier will be the same as the tier held prior to retirement.



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Generally, by rejoining the System, the member can receive an additional retirement benefit after earning two extra years of service credit. (For Tier 3 retirees, five extra years of service credit are required.)

If the member rejoins the System and earns **five years or more** of additional service credit, the member has the option of having their original retirement benefit recalculated instead of collecting two separate benefits. This would require the member to repay the System the benefits received prior to suspending their pension, plus interest. Repayment can be made in a lump sum or as a permanent reduction in their new retirement benefit.

The retiree should contact NYSTRS for additional information and to obtain the appropriate membership application.

### Retirees Employed as Consultants or Independent Contractors

A consultant is an independent contractor who is **not** an employee of the public entity for which they work. Typically, a consultant is hired and/or paid by a third-party firm. However, because the work is being performed for a public employer, the legislated earnings limit of \$35,000 for 2020 earnings and subsequent years remains in effect for retirees who joined NYSTRS on or after May 31, 1973.

Earnings as a consultant are unlimited for those retirees who joined the System prior to May 31, 1973. However, individuals hired in this capacity must satisfy the following criteria:

1. The service being rendered **cannot** be any function or operational task which would normally be completed by a regular employee of the district.
2. The consultant must be working as a *bona fide* independent contractor rather than an employee.

See the ***Guidelines to Assist Reportability for Consultants, Independent Contractors and Casual Employees (RMS-96)***, also available in the Employer > Employer Forms section of our website at NYSTRS.org.

All consulting agreements must be reviewed by the System prior to the commencement of services to determine whether or not an individual is a consultant for retirement benefit purposes. Improper classification could result in substantial penalties to the retired member if they exceed the earnings limitations. An employer's characterization of employment as a "consultant" or an "independent contractor" is not binding on NYSTRS and does not necessarily require NYSTRS to accept the characterization or description. All such agreements are subject to audit at any time as deemed necessary by NYSTRS.

The earnings of all NYSTRS retirees working under consultant agreements must be reported to NYSTRS.



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#### Employees Retired for Disability

Disability retirees contemplating employment should be strongly urged to contact the retirement system from which they are receiving benefits to ascertain the impact employment may have on their disability retirement allowance.

Tier 3-6 retirees must be totally and permanently disabled from all employment to qualify for, and continue to receive, a disability retirement benefit. Employment of any type may jeopardize the retiree's disability pension.

While Tier 1-2 retirees must be totally and permanently disabled from further teaching, they may work in a different job that is not affected by their disability. However, certain limitations on earnings apply. The amount of earnings allowed during a calendar year is limited to the difference between their final average salary (or the salary they would now be receiving had they continued in service, whichever is greater) and their retirement benefit.

Teachers who are hired on a full-time, per annum contractual basis and are also receiving a disability retirement allowance from another New York state public retirement system must join NYSTRS. They should indicate their disability retirement status in the appropriate portion of the **Application for Membership (NET-2)**. The tier level established for these members will be the same tier they held prior to their retirement. These employees should be reported on the employer report under their new EmplID in the same manner as all other full-time, per annum contractual employees. Membership is optional for teachers who are employed less than full-time and who are receiving a disability retirement allowance from another New York state public retirement system.

Since the provisions governing employment after retirement are complex, retirees considering re-employment should contact our Retired Member Services Unit at (800) 348-7298, Ext. 6150. If calling from the Albany area, use (518) 447-2900, Ext. 6150.

#### COVID-Related Legislation Regarding Earnings After Retirement

The earnings limit has been temporarily suspended at times by state executive orders since the start of the COVID-19 pandemic in March 2020. In addition, a new state law extended the retirement earnings cap suspension through June 30, 2023 for public retirees who return to work at a public school district or BOCES. For the latest information, see the **Earnings After Retirement** page at NYSTRS.org.

**Despite the suspension, all retiree earnings must still be reported to NYSTRS by both the employer and the retiree.**