



NYSTRS has provided retirement security to NYS public school educators since 1921.



# Working in Retirement

## Your Questions Answered

### WHEN CAN I WORK AND HAVE UNLIMITED EARNINGS?

If you are a NYSTRS service retiree, you can have unlimited earnings in retirement without it impacting your public pension under the following scenarios:

- All employment (including public employment) beginning in the calendar year you turn 65.
- 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 you were elected or appointed to an elected position you did not hold prior to retirement.
- Consultant work for a NYS public employer only if your NYSTRS date of membership is prior to May 31, 1973 AND the consultant agreement has been reviewed and approved by NYSTRS.

### WHAT IF I PLAN TO WORK FOR A NYS PUBLIC EMPLOYER?

If you are a **service retiree** and plan to work for a NYS public employer while collecting a NYSTRS pension, your earnings are generally limited to \$35,000, under Section 212 of the state's Retirement & Social Security Law. However, there are exceptions. You cannot be a member of any New York State public retirement system and receive service credit while receiving a New York State pension. The following summarizes your public employment options.

### Earning Less Than The Sec. 212 Limit

This is the most common scenario for NYSTRS **service retirees**. No prior approval is needed and you can continue to collect your pension as long as your calendar year earnings do not exceed \$35,000. **Please Note:** The earnings limit applies even if your public employer is contracting for your services through a private, third-party entity. (See "What if I Plan to Work for a Private Company that Provides Consulting Services to a Public Employer?" later in this document.)

Legislation since 2022 has suspended the \$35,000 earnings limit for under-65 retirees who return to work at a school district or board of cooperative educational services (BOCES). Work at a charter school, community college, SUNY, or any other public employment is not covered by this law and is still subject to the earnings limitation as described here. This suspended limit has since been extended but is subject to change. For the latest details, visit the Retirees/Earnings After Retirement page at [nystrs.org](http://nystrs.org).

However, if you are under 65 and work for a NYS public employer, you are required to report your earnings to NYSTRS as soon as you reach the limit within a calendar year – even if you work under a waiver or your public

*Working in retirement rules differ based on employment type, your age and other variables, including whether you are a service retiree or a disability retiree (see page 3 if you are a disability retiree). Making sense of it can be challenging.*

*This fact sheet lays out the various employment possibilities in an easy-to-use question and answer format.*

employer contracted with a private, third-party entity to hire you. (See “Do I Have to Report My Earnings to NYSTRS?” for details.) Use the Earnings After Retirement feature in MyNYSTRS to assist you with tracking your earnings throughout the year.

If you work for a NYSTRS-participating employer, you must provide your NYSTRS EmplID to your employer. In addition to your own reporting, a NYSTRS-participating employer must report your earnings to us on a monthly basis.

If you are subject to the earnings limit and exceed it at any time during a calendar year, NYSTRS will suspend your pension for the remainder of the calendar year if you continue working in NYS public employment. You may also be required to repay NYSTRS for pay earned for work beyond the limit.

#### NOTEWORTHY:

- If you intend to return to work immediately after retiring, there must be at least one business day between the date you left payroll as an active member and the date you returned to public employment as a NYSTRS retiree. Holidays and weekends do NOT count toward this break in service.
- In most cases, if you get a job with an employer that participates in a different NYS public retirement system, you cannot earn service credit in the other system while still receiving your NYSTRS pension.

## Earnings Exceeding The Limit

### *With a Waiver*

Under Section 211 of the state’s Retirement & Social Security Law, you may exceed the earnings limit if your public employer obtains a waiver on your behalf from the entity with jurisdiction over the job prior to the start of your employment. The employer must demonstrate that there is an urgent need for your services or that there are no available, qualified non-retired persons to fill the position.

Waivers can be granted by the NYS education commissioner, NYC schools chancellor, NYC Board of Higher Education (which oversees City University of New York), State University of New York chancellor, SUNY and public community college presidents, the NYS or NYC Civil Service Commission, and the chief administrator of the unified court system. **Please Note:** Your employer must apply for the waiver. Neither NYSTRS nor any other state retirement system has the authority to grant waivers. Members should also remind their employers to send the completed waiver application to NYSTRS. Restrictions on working with a waiver:

- Waivers are generally limited to one year and cannot exceed two years.
- If you intend to work in a position the same or similar to the position from which you retired, you must wait one year from your date of retirement before beginning employment.
- If you return to work for an employer you earned pay from in the two years prior to retirement and those earnings were used in the calculation of your final average salary (FAS), your calendar year earnings in retirement are limited to the difference between your FAS and your calculated maximum retirement benefit. If the salary you would have earned had you not retired is greater than your FAS, the limit is the difference between that salary and your maximum benefit. You also cannot renounce previously reported earnings to achieve unlimited earnings in retirement.

### *Without a Waiver*

If you choose to work in NYS public employment as a service retiree and you want to be able to have unlimited earnings without obtaining a waiver, you will need to suspend your NYSTRS retirement benefit once you have reached the limit. You can do so by sending NYSTRS a signed letter requesting a benefit suspension. If you return to work for a NYSTRS-

participating employer, you may rejoin the System as an active member in your first year of post-retirement employment. If you retired as a Tier 1-5 member, your new membership date will be the last day of your original membership tier.

If your work for a NYSTRS-participating employer continues into a second year, you must rejoin the System as an active member.

Generally, by rejoining the System, you 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 you rejoin the System and earn five years or more of additional service credit, you have the option of having your original retirement benefit recalculated instead of collecting two separate benefits. This would require you to repay the System the benefits you received prior to suspending your pension, plus interest. Repayment can be made in a lump sum or as a permanent reduction in your new retirement benefit.

If you qualify for an additional benefit or a full recalculation, you will lose any service credit you may have gained through a previous state retirement incentive.

If you resume retirement without meeting the service credit requirements necessary for an additional benefit or a full recalculation of your benefit, your original pension will remain unchanged.

### **WHAT IF I PLAN TO WORK FOR A PRIVATE COMPANY THAT PROVIDES CONSULTING SERVICES TO A PUBLIC EMPLOYER?**

Even though you would be paid by a third-party firm and would not be a direct employee of the public entity, this would still be considered public employment. The earnings limit would remain in effect, if you joined NYSTRS on or after May 31, 1973. Only those with a membership date prior to May 31, 1973, can exceed the limit in this situation. **Please Note:** A consultant working at a school cannot perform a function that otherwise

would be performed by a teacher or administrator employed by the district.

NYSTRS must review and approve all consultant agreements prior to employment. Failure to submit an agreement for approval and/or exceeding the earnings limit without a waiver could jeopardize continued receipt of your pension.

### **DO I HAVE TO REPORT MY EARNINGS TO NYSTRS?**

Unless you fall into a category which allows unlimited earnings, you must report your non-pension earnings to NYSTRS. This is required even if your public employer reports your earnings or you have a waiver to exceed the earnings limit.

If you have a MyNYSTRS account, use the Earnings After Retirement feature to report your earnings. We recommend reporting monthly even if you do not expect to exceed the limit. Timely self-reporting helps you track your earnings and avoid having to repay a portion of your retirement benefit.

Alternatively, you may complete and submit the Reporting Your New York State Public Employment Earnings (RMS-64.1) form as soon as you reach the limit in a calendar year. Even if you don't reach the limit, all yearly public employment earnings must be reported no later than March 31 of the following calendar year. The form is available on the Retiree Forms page of [nystrs.org](http://nystrs.org).

## **Special Situations**

### **WHAT IF I DON'T HAVE A WAIVER AND I EXCEED THE EARNINGS LIMIT?**

If your public employer did not obtain a waiver allowing you to exceed the earnings limit and you do so, you must notify NYSTRS as soon as you reach the limit. Report your earnings using the Earnings After Retirement feature of your MyNYSTRS account, or complete and submit to NYSTRS form RMS-64.1.

The following will apply:

NYSTRS will suspend your pension for the remainder of the calendar year

if you continue working in NYS public employment.

You will be required to pay back NYSTRS your retirement benefit for each day you exceeded the limit.

If you stop working in public service for the remainder of the calendar year, your pension can be restored. To reactivate your pension, you will need to provide (in writing to NYSTRS) the date you stopped working in NYS public employment.

### **WHAT IF I AM NEARING THE EARNINGS LIMIT AND I DON'T WANT MY PENSION SUSPENDED?**

If you anticipate you will exceed the earnings limit before the end of the calendar year and you wish to continue receiving your pension, you must stop working in NYS public service for the remainder of the calendar year prior to reaching the limit. Use the Earnings After Retirement feature in MyNYSTRS to help you track your earnings.

Alternatively, if you want to continue working, you can voluntarily suspend your pension for the rest of the calendar year. Requests to temporarily suspend your pension must be made in writing to NYSTRS.

### **WHAT IF MY WAIVER SPECIFIES AN EARNINGS LIMIT AND I EXCEED THAT LIMIT?**

If you exceed the specified limit, your pension will be suspended for the remainder of the calendar year if you continue working in NYS public employment. You also will be required to repay NYSTRS the dollar amount you earned in excess of the waiver limit.

### **WHAT IF I AM COLLECTING A DISABILITY RETIREMENT BENEFIT?**

#### **Tier 3-6 Members**

You 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 your disability pension.

#### **Tier 1 and 2 Members**

It is possible for Tier 1 and 2 members

to receive a disability retirement from their teaching job and then work in a different job that is not affected by their disability. However, the amount of earnings allowed during a calendar year is limited to the difference between your final average salary (or the salary you would now be receiving had you continued in service, whichever is greater) and your retirement benefit.

If you earn more than the limit, your disability benefit will be reduced to reflect the excess earnings. While the calculation of your earnings limit considers income from all forms of employment, it does not include returns on investments (stocks, bonds, etc.) or other disability benefits you are receiving.

#### **ALL Disability Retirees:**

You must report your gross employment earnings (or confirm you are not gainfully employed) to NYSTRS annually using either the Disability Earnings After Retirement feature in MyNYSTRS or a paper Disability Retiree Statement of Earnings (DIS-153) form, which will be mailed to you each February.

If you are considering returning to paid employment, we urge you to contact the System first to determine eligibility for continued benefits.

Please be aware that a disability retiree may be required at any time to undergo a medical examination by a physician designated by the System. If the NYSTRS Medical Board determines that you are no longer disabled, your disability benefit will be discontinued and you will be restored to active membership.

## **Still Have Questions?**

Call us at 800-348-7298, ext. 6150.

**Please Note:** *Contact the Social Security Administration to learn about its own earnings limitations. NYSTRS cannot answer questions regarding Social Security.*

**July 2024**