

September 24, 2012

TO: All County Superintendents of Schools  
District Superintendents of Schools  
Charter School Administrators  
Community College Districts and  
Other Employing Agencies

FROM: Jack Ehnes  
Chief Executive Officer

SUBJECT: Employer Directive 2012-05  
***Supersedes Employer Directive 2012-01***  
Earnings Limit and Legislative Changes for the 2012-13 Fiscal and 2012  
Calendar Years

## PURPOSE

This employer directive is intended to inform and remind employers of:

- The service retirement postretirement earnings limit for the 2012-13 fiscal year.
- The disability retirement earnings limit for the 2012 calendar year.
- The disability allowance earnings limit for the 2012-13 fiscal year.
- Legislative changes to clarify the application of the earnings limit and introduce the extension of a previous earnings limit.
- The application of the earnings limit for retired CalSTRS members.
- The restriction for retired CalSTRS members who are under age 60.
- Restrictions on hiring retired CalSTRS members who received a retirement incentive through CalSTRS.
- Restrictions on hiring retired CalSTRS members in classified positions.
- Requirements for employers to inform retired CalSTRS members performing creditable service about the annual earnings limit and to report postretirement earnings to CalSTRS.
- The postretirement excess earnings notification process.
- The sunset of previous service retirement postretirement earnings limit exemptions as of June 30, 2012.
- Examples of financial consequences of exceeding the earnings limit.

## SCOPE

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts, and any agency that employs retired members of the Defined Benefit (DB) Program (referred to in this directive as “retired CalSTRS members”) to perform creditable service.

## DISCUSSION

### 2012-2013 Postretirement Earnings Limit

The postretirement earnings limit for the 2012-13 *fiscal* year is \$40,011. This figure represents an increase from the previously indicated earnings limit of \$31,020. The earnings limit applies to earnings received for service performed on behalf of the California public school system. The limit is adjusted annually by the Teachers’ Retirement Board and is equal to one-half (or 50 percent) of the median final compensation figure for members who retired for service retirement during the fiscal year ending in the previous calendar year (i.e., the earnings limit for this fiscal year is based on 50% of the median final compensation for members who retired during the 2010-11 fiscal year).

### 2012 Disability Retirement Earnings Limit

The disability retirement earnings limit for the 2012 *calendar* year is \$27,000. The limit applies to all earnings regardless of whether they are earnings from the public or private sectors. The limit is adjusted annually by the Teachers’ Retirement Board, if necessary, by the amount of change in the California Consumer Price Index.

### 2012-2013 Disability Allowance Earnings Limit

The disability allowance retirement earnings limit for the 2012-13 *fiscal* year is calculated individually for each member. The limit applies to all earnings regardless of whether they are earnings in the public or private sectors. The limit is based on the member’s indexed final compensation amount. Members with Coverage A are subject to a monthly earnings limit and a continuous six-month earnings limit.

### Legislative Changes

Chapter 135, Statutes of 2012 (AB 178—Gorell), which was approved July 17, 2012, makes changes to postretirement employment provisions in the Teachers’ Retirement Law. The legislation increases the postretirement earnings limit in 2012-13 to \$40,011, excludes the reporting of employees of a third party under specific conditions, extends a narrow exemption for certain appointments through June 30, 2013, and extends that exemption to include a special trustee that has been appointed by the Board of Governors for a community college district that fails to achieve fiscal stability or fails to comply with the Board of Governors recommendations. **Subsequent to the enactment of Chapter 135, the Legislature enacted Chapter 296; Statutes of 2012 (AB 340-Furutani), which modified some provisions of Chapter 135, effective January 1, 2013. CalSTRS will shortly issue a superseding directive which incorporates the provisions of Chapter 296.**

Application of Earnings Limit

Section 24214 imposes limitations on any retired CalSTRS member who returns to work and performs creditable service as either an employee of an employer, an employee of a third party (except under certain circumstances), or as an independent contractor within the California public school system. Activities considered to be creditable service and, therefore, subject to the earnings limit are listed in Section 22119.5.

Restriction for Retired CalSTRS Members who are Under Age 60

Pursuant to Section 24214.5, retired CalSTRS members who are under age 60 and have been retired for less than six months are subject to a restriction if they return to CalSTRS-covered employment during that time. If the retired member returns to work during this period, CalSTRS will reduce his or her retirement benefit dollar-for-dollar by an amount equal to his or her earnings. This law does not allow exemptions. This restriction is in addition to the annual earnings limit. Any amount the retired CalSTRS member receives while under age 60 will also count against the annual postretirement earnings limit for the appropriate fiscal year.

Retirement Incentive Restrictions

A member who retired with a CalSTRS retirement incentive under Section 22714 will lose the increased retirement benefit attributable to the incentive if he or she returns to employment in any capacity, including in permissible classified service, within five years of retirement for the school district, community college district, or county office of education that granted the member the retirement incentive.

Classified Position Restrictions

Section 45134 may preclude retired CalSTRS members from employment in classified positions in the California public school system. This section is outside the Teachers' Retirement Law and would be enforced by the Department of Education.

Notification and Reporting of Postretirement Earnings by Employer

Section 22461 requires employers to notify retired CalSTRS members of the earnings limits and report earnings to CalSTRS each month. All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

Postretirement Excess Earnings Notification Process

If a retired CalSTRS member earns compensation in excess of the annual postretirement earnings limit as an employee of an employer, an employee of a third party (except under certain circumstances), or as an independent contractor within the California public school system, Section 24214(g) requires CalSTRS to reduce the member's retirement benefit dollar-for-dollar by the amount of compensation that exceeds the earnings limit until the amount withheld equals the excess earnings up to a maximum of the member's annual retirement benefit.

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CalSTRS sends two letters to the retired member. The first notification is sent when postretirement earnings are initially reported by the employer. The letter is the *Initial Postretirement Earnings Letter* (SR 1369.1) and states information regarding both earnings limits and what occurs if they are exceeded. When the employer reports postretirement earnings equal to one-half of the annual postretirement earnings limit, CalSTRS sends a second letter, called the *Postretirement Earnings Mid-Limit Letter* (SR 1369.2), notifying the member of the dollar amount reported to date, and reminding the member of the consequences of exceeding the earnings limits.

When a member exceeds either earnings limit, CalSTRS sends the member another letter notifying him or her that the excess earnings will be withheld from his or her monthly retirement benefit. CalSTRS gives at least 30 days' notice before commencing collection. If the earnings were reported to CalSTRS in error by a member's employer, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

Employers can assist retired members and CalSTRS by taking the following actions:

- Inform members of the current fiscal year earnings limit (\$40,011).
- Assist members with tracking their earnings so they do not exceed the limit.

#### Exemption When Working In Distressed Schools

As of July 1, 2012, there is a narrow exemption available for certain appointments to assist schools that are in financial or academic distress. Through June 30, 2013, some retired members may qualify for an exemption from the postretirement earnings limit if they meet the eligibility criteria specified in Section 24214. Please refer to Attachment 1 for additional information about the postretirement earnings limit exemption.

When applying for this exemption, the law requires that all requests must be received by CalSTRS prior to the retired member performing creditable service as identified in 22119.5 or 26113. In order for CalSTRS to consider an application for an exemption, we must receive the exemption form and required documentation prior to the member beginning work. If we do not receive the form and required documentation prior the beginning of a member's postretirement service, CalSTRS is unable to accept the form for consideration.

Due to the effective date of this legislation, some potentially eligible retired members may have already begun employment. In order for these members to apply for this exemption, they must stop working, and the appointing authority must submit the exemption request and supporting documentation. These requests are still subject to CalSTRS approval and must be received by CalSTRS prior to the retired member performing additional service. Any compensation earned prior to the exemption documentation received by CalSTRS counts toward the annual postretirement earnings limit.

The form for this exemption is available on the Secure Employer Web site.

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Prior Postretirement Earnings Limit Exemptions

**ALL OTHER EXEMPTIONS TO THE POSTRETIREMENT EARNINGS LIMIT ENDED ON JUNE 30, 2012.** The expiration of the previous exemptions applies to all members, regardless of their retirement date. The expired exemptions include: Direct Classroom and Remedial Exemption, Emergency Exemption, and the 12-Month Break Exemption. The exemption described in this directive will continue to be in effect until June 30, 2013.

With only a very narrow exemption available for the 2012-13 fiscal year, the majority of retired members will be restricted by the annual postretirement earnings limit. For members receiving a disability benefit, the limit applies to all employment. For members receiving a service retirement benefit, the postretirement earnings limits apply only to CalSTRS-covered employment.

Exclusion When Working for a Third Party

Retired members employed by a third party are excluded from the postretirement earnings limit and related provisions provided they meet all of the following criteria:

- The retired member is employed by a third party that does not participate in a California public pension system;
- The activities performed by the retired member are not normally performed by the employees of the employer; and
- The activities are performed by the retired member for a limited term.

Employer reporting of retired members who are employed by a third party under the narrow conditions above is no longer required. CalSTRS has not identified any example of service that would meet these criteria.

Examples of Financial Consequences of Exceeding the Earnings Limit

Below are three scenarios of retired CalSTRS members who have exceeded one or both of the earnings limits.

**EXAMPLE I:**

(Annual Postretirement Earnings Limit)

Mr. Jones, age 65, retires June 30, 2012. He receives \$5,500 per month in retirement from CalSTRS. He returns to employment for two school districts in the California public school system two months later on September 1, 2012. By March 2013, he earns \$20,000 from District 1 and \$30,000 from District 2, for a total of \$50,000. He exceeds the earnings limit by \$9,989 ( $\$50,000 - \$40,011 = \$9,989$ ). CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' \$9,989 of excess earnings for fiscal year 2012-13 from his \$5,000 gross monthly retirement benefit as follows:

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	<b>Monthly Benefit Amount</b>	<b>Outstanding Earnings Limit Overage to Collect</b>	<b>Deduction From Monthly Benefit</b>	<b>Net Monthly Benefit Amount</b>
<b>1st Month</b>	\$5,500	<b>\$9,989</b>	\$5,500	\$0
<b>2nd Month</b>	\$5,500	<b>\$4,489</b>	\$4,489	\$1,011

**EXAMPLE II:**(Restriction for Retired Members Under Age 60)

Ms. Garcia, age 59 and 4 months, retires June 30, 2012. She receives \$7,500 per month in retirement from CalSTRS. After her retirement, she returns to employment in the California public school system on July 1, 2012. She returns to work prior to age 60 and does not have a six-month break in service.

Ms. Garcia earns \$3,500 each month in postretirement earnings for a total of \$42,000 by June 30, 2013. During the first six months of employment after her retirement, Ms. Garcia earns \$21,000 in postretirement earnings. Because she is under age 60 at the time of retirement, she is restricted from earning any amount for the first six months after her retirement date. In addition, she exceeds the annual earnings limit by \$1,989 ( $\$42,000 - \$40,011 = \$1,989$ ). CalSTRS is required to collect \$22,989 ( $\$21,000 + \$1,989 = \$22,989$ ).

CalSTRS will collect the \$22,989 of excess earnings from her \$7,500 gross monthly retirement benefit as follows:

	<b>Monthly Benefit Amount</b>	<b>Outstanding Earnings Limit Overage to Collect</b>	<b>Deduction From Monthly Benefit</b>	<b>Net Monthly Benefit Amount</b>
<b>1st Month</b>	\$7,500	<b>\$22,989</b>	\$7,500	\$0
<b>2nd Month</b>	\$7,500	<b>\$15,489</b>	\$7,500	\$0

<b>3rd Month</b>	\$7,500	<b>\$7,989</b>	\$7,500	\$0
<b>4th Month</b>	\$7,500	<b>\$489</b>	\$489	\$7,011

**EXAMPLE III:**

(Working for a Third Party)

Mr. Smith, age 63, retires June 30, 2012. He receives \$10,000 per month in retirement from CalSTRS. He returns to employment for Party of Three, Inc., a third-party employer, and works as an interim superintendent for a school district in the California public school system two months later on September 1, 2012. By May 31, 2013, he earns \$108,000. He exceeds the earnings limit by \$67,989 ( $\$108,000 - \$40,011 = \$67,989$ ). CalSTRS will collect the excess earnings dollar-for-dollar from his gross monthly retirement benefit.

CalSTRS will collect Mr. Jones' \$67,989 of excess earnings for fiscal year 2012-13 from his \$10,000 gross monthly retirement benefit as follows:

	<b>Monthly Benefit Amount</b>	<b>Outstanding Earnings Limit Overage to Collect</b>	<b>Deduction From Monthly Benefit</b>	<b>Net Monthly Benefit Amount</b>
<b>1st Month</b>	\$10,000	<b>\$67,989</b>	\$10,000	\$0
<b>2nd Month</b>	\$10,000	<b>\$57,989</b>	\$10,000	\$0
<b>3rd Month</b>	\$10,000	<b>\$47,989</b>	\$10,000	\$0
<b>4th Month</b>	\$10,000	<b>\$37,989</b>	\$10,000	\$0
<b>5th Month</b>	\$10,000	<b>\$27,989</b>	\$10,000	\$0
<b>6th Month</b>	\$10,000	<b>\$17,989</b>	\$10,000	\$0
<b>7th Month</b>	\$10,000	<b>\$7,989</b>	\$7,989	\$2,011

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### **ACTION**

In accordance with Section 22461, upon retaining the services of a retired CalSTRS member as an employee of an employer, an employee of a third party, or as an independent contractor within the California public school system, the employer is required to:

- Notify the retired member of the earnings limit.
- Maintain accurate records of the retired member's earnings.
- Report those earnings to the retired member and to CalSTRS monthly, using Member Code 2 and Assignment Code 61, regardless of the method of payment or the fund from which the payments were made.

To learn more about postretirement limitations, please visit [CalSTRS.com](http://CalSTRS.com), click "Members" and then click "Working After Retirement." If you have questions regarding the postretirement earnings limit, you may email [postretirement@calstrs.com](mailto:postretirement@calstrs.com) or leave a voicemail at (916) 414-5967.

SUPERSEDED

## Postretirement Earnings Limit Exemption Matrix

<ul style="list-style-type: none"> <li>Exemption forms AND required documentation must be received by CalSTRS prior to the retired member beginning service.</li> <li>Qualification for the sole existing exemption is subject to CalSTRS approval. After review is complete, CalSTRS sends a letter to a member approving or denying the exemption request.</li> <li><b><u>There are no exemptions for any service performed after June 30, 2013.</u></b></li> </ul>		
Exemption Eligibility	Required Certification	Required Form and Education Code
<p>Exemption limited from date of appointment to June 30, 2013.</p> <p>Four specific appointments are exempt:</p> <ul style="list-style-type: none"> <li>Appointment by the State Superintendent of Public Instruction as a trustee for a school district that has received an emergency apportionment.</li> <li>Appointment by a county superintendent of schools as a fiscal adviser or fiscal expert for a school district that must revise its budget or that may or will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year(s).</li> <li>Appointment by the State Board of Education as a trustee or a receiver for a local educational agency that has been identified for corrective action under the federal No Child Left Behind Act of 2001.</li> <li>Appointment by the Board of Governors of the California Community Colleges as a special trustee for a community college district that fails to achieve fiscal stability or that fails to comply with Board of Governors recommendations.</li> </ul>	<p>The appointing authority must certify that:</p> <ul style="list-style-type: none"> <li>The position was advertised to active or inactive members and no qualified person was available to be appointed.</li> <li>The appointing authority made a good faith effort to hire a retired member who would reinstate.</li> <li>The salary being paid does not exceed what was advertised or is currently paid for that position.</li> <li>The appointment terminates no later than June 30, 2013</li> </ul>	<p><u>Form SR0164</u>            Certification for Postretirement Earnings Limit Exemption</p> <p><u>Education Code</u>            Section 24214</p>