

March 12, 2018

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 2018-01
Supersedes Employer Directive 2017-03
Postretirement Earnings Limit for the 2017-18 Fiscal Year, 2018-19 Fiscal Year and
2018 Calendar Year

PURPOSE

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

- The application of the earnings limit for retired CalSTRS members.
- The annual postretirement earnings limit for the 2017-18 fiscal year for retired CalSTRS members.
- The annual postretirement earnings limit for the 2018-19 fiscal year for retired CalSTRS members.
- The postretirement separation-from-service requirement for retired CalSTRS members during the first 180-calendar days from their retirement date with CalSTRS.
- Requirements for requesting an exemption from the separation-from-service requirement.
- Restrictions on hiring retired CalSTRS members in classified positions.
- Retirement incentive restrictions.
- Requirements for employer communication regarding the earnings limits and, if applicable, the retirement incentive restrictions when hiring retired CalSTRS members. Also, the employer requirements regarding maintaining accurate records and reporting postretirement earnings to CalSTRS.
- The CalSTRS postretirement excess earnings notification process.
- The postretirement separation-from-service requirement for retired CalSTRS participants during the first 180-calendar days from their retirement date and restrictions on hiring retired CalSTRS participants in classified positions.
- The disability retirement earnings limit for the 2018 calendar year.
- The disability allowance earnings limit for the 2017-18 and 2018-19 fiscal years.

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”) or retired participants of the Cash Balance (CB) Benefit Program (referred to in this directive as “retired CalSTRS participants”) to perform creditable service or that employs CalSTRS members receiving either a Disability Allowance or Disability Retirement benefit in any capacity.

DISCUSSION

Application of Annual Postretirement Earnings Limit for Defined Benefit Program

Section 24214 of the Education Code imposes an annual postretirement earnings limit on retired CalSTRS members who return to work and perform retired member activities. Section 22164.5 defines “retired member activities” as one or more of the activities identified in subdivision (b), (c) or (d) of Section 22119.5 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor within the California public school system.

The salary being paid for retired member activities may not be less than the minimum, nor can it exceed the maximum, paid by the employer to other employees performing comparable duties.

If a retired CalSTRS member earns compensation for performing retired member activities in excess of the annual postretirement earnings limit, Education Code section 24214(g) requires CalSTRS to reduce the member’s retirement benefit dollar-for-dollar, up to a maximum of the member’s retirement benefit minus any reductions due to the separation-from-service requirement, until the member has repaid the amount of compensation that was earned in excess of the earnings limit.

Annual Postretirement Earnings Limits for Defined Benefit Program

The postretirement earnings limit for retired CalSTRS members for the 2017–18 *fiscal* year is \$43,755.

The postretirement earnings limit for retired CalSTRS members for the 2018–19 *fiscal* year is \$45,022.

The limit is adjusted annually by CalSTRS and is equal to one-half of the median final compensation amount for all members who retired for service during the fiscal year ending in the previous calendar year.

Separation-From-Service Requirement for Defined Benefit Program

Pursuant to Education Code section 24214.5, there is a 180-calendar day separation-from-service requirement for all retired CalSTRS members, regardless of age, during which the postretirement compensation limit for the performance of retired member activities is zero dollars (\$0).

If a retired CalSTRS member earns compensation for performing retired member activities during this period, Education Code section 24214.5(h) requires CalSTRS to reduce the member's retirement benefit dollar-for-dollar, up to a maximum of the member's retirement benefit payable during that period, until the member has repaid the amount of compensation that was earned during the separation-from-service period. This restriction is in addition to the annual postretirement earnings limit. Any amount the retired CalSTRS member receives during the first 180 calendar days of retirement will also count against the annual postretirement earnings limit for the appropriate fiscal year.

Application of Postretirement Requirements for Cash Balance Benefit Program

Section 26812 of the Education Code imposes limitations on retired CalSTRS participants who return to work and perform retired participant activities. Section 26135.7 defines "retired participant activities" as one or more of the activities identified in subdivision (b), (c) or (d) of Section 26113 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor within the California public school system.

The salary being paid for retired participant activities may not be less than the minimum, nor can it exceed the maximum, paid by the employer to other employees performing comparable duties.

There is no annual earnings limit for retired CalSTRS participants other than the separation-from-service limit.

Separation-From-Service Requirement for Cash Balance Benefit Program

Pursuant to Education Code section 26812, there is a 180-calendar day separation-from-service requirement for all retired CalSTRS participants receiving an annuity, regardless of age, during which the postretirement compensation limit for the performance of retired member activities is zero dollars (\$0).

If a retired CalSTRS participant earns compensation for performing retired participant activities during this period, Education Code section 26812(d)(2) requires CalSTRS to reduce the participant's retirement benefit dollar-for-dollar, up to a maximum of the participant's retirement benefit during that period, until the participant has repaid the amount of compensation that was earned during the separation-from-service period.

If a retired CalSTRS participant is receiving a retirement benefit as a lump-sum payment, the benefit will not be payable until 180 calendar days after the date employment was terminated. If the retired CalSTRS participant performs retired participant activities during this waiting period, the retirement will be cancelled, and the benefit payment will not be received.

Exclusion When Working for a Third Party

Retired CalSTRS 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 CalSTRS member is employed by a third party that does not participate in a California public pension system.

- The activities performed by the retired CalSTRS member are not normally performed by the employees of an employer.
- The activities are performed by the retired CalSTRS member for a limited term of 24 months or less.

Employer reporting of retired CalSTRS members who are employed by a third party under the narrow conditions above is not required. CalSTRS has not identified any example of service that would meet these criteria.

The information above regarding the exclusion when working for a third party also applies to retired CalSTRS participants.

Exemption to the Separation-From-Service Requirement

There is a narrow exemption from the 180-calendar day separation-from-service requirement for a retired CalSTRS member or retired CalSTRS participant under certain circumstances. To qualify for this exemption, the retired CalSTRS member or retired CalSTRS participant must be at or above normal retirement age at the time the compensation is earned, and the CalSTRS-covered employer must appoint the retired CalSTRS member or retired CalSTRS participant to a critically needed position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution. The resolution regarding the appointment must be adopted before the retired CalSTRS member or retired CalSTRS participant begins performing retired member or retired participant activities under the exemption. The resolution approving the appointment may not be placed on a consent calendar.

The resolution must include the following specific information and findings:

- The intent to seek an exemption from the 180-calendar day separation-from-service requirement.
- The nature of the employment.
- A finding that the appointment is needed to fill a critically needed position before the 180-calendar day separation-from-service requirement is fulfilled.
- A finding that the member or participant did not receive a retirement incentive or any financial inducement to retire from any public employer.
- A finding that, by retiring, the member or participant did not create the vacancy the member or participant is now filling.

When applying for the separation-from-service requirement exemption, the superintendent, the county superintendent of schools or the chief executive officer of a community college must complete the *Request for Separation-From-Service Requirement Exemption (SR 1897)* form, which is available in "Reference Items" on the Secure Employer Website. CalSTRS must receive this form and the aforementioned resolution indicating the above information to substantiate the eligibility of the retired CalSTRS member or retired CalSTRS participant for the exemption before the member or participant begins performing service under the exemption. CalSTRS must notify the employer and the retired CalSTRS member or retired CalSTRS participant within 30 days of receiving the

resolution and all required documentation whether the service performed will be subject to or exempt from the 180-calendar day separation-from-service requirement.

If the separation-from-service requirement exemption is approved, the retired CalSTRS member or retired CalSTRS participant will only be exempt from the separation-from-service requirement. Any earnings during the 180-calendar day period will still be subject to the annual postretirement earnings limit for retired CalSTRS members.

Education Code sections 24214.5 and 26812 clarify what constitutes a “financial inducement to retire” that would prohibit a retired CalSTRS member or retired CalSTRS participant from being eligible for an exemption from the separation-from-service requirement.

Classified Position Restrictions

Education Code section 45134 precludes retired CalSTRS members and retired CalSTRS participants from employment in classified positions in the California public school system. However, this section is outside of the Teachers’ Retirement Law and therefore outside the purview of CalSTRS.

Retired CalPERS Postretirement Employment Restrictions

If the employee is a CalSTRS and CalPERS member, please ask the employee to contact CalPERS at 888-225-7377 to determine the impact that returning to work would have on his or her CalPERS benefit.

Retirement Incentive Restrictions

Members who retired with a CalSTRS retirement incentive under Education Code section 22714 will lose the increased service credit attributable to the retirement incentive if they return to employment in any job, including substitute teaching, within five years of receiving the incentive with the school district, community college district or county office of education that granted the retirement incentive. Education Code section 22461 requires the employer to notify retired members of the employment restrictions in Education Code section 22714 upon retaining their services.

Employer Requirements for Notification of Postretirement Earnings and Employment Restrictions, and Required Reporting of Postretirement Earnings

Upon retaining the services of a retired CalSTRS member, Education Code section 22461 requires employers to notify the retired CalSTRS member of earnings limitations and employment restrictions for those who receive retirement incentives, regardless of whether the retired CalSTRS member performs the services as an employee of the employer, an employee of a third party or an independent contractor. Employers must also report the retired member’s earnings to CalSTRS each month. All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

CalSTRS Postretirement Excess Earnings Notification Process

CalSTRS sends an *Initial Postretirement Earnings Letter* to the retired CalSTRS member when postretirement earnings are initially reported by the employer. The *Initial Postretirement Earnings Letter* informs the retired CalSTRS member of the current earnings limit and describes what occurs if the limit is exceeded. When the employer reports postretirement earnings equal to one-half of the

annual postretirement earnings limit, CalSTRS sends a second letter, the *Postretirement Earnings Mid-Limit Letter*, notifying the retired CalSTRS member that their gross earnings for CalSTRS-covered employment have reached one-half of the annual earnings limit for that fiscal year and reminding the retired CalSTRS member of the consequences of exceeding the earnings limit.

When a retired CalSTRS member or retired CalSTRS participant either violates the 180-calendar day separation-from-service requirement or when the retired CalSTRS member exceeds the annual postretirement earnings limit, CalSTRS sends the retired CalSTRS member or retired CalSTRS participant a letter notifying him or her of the excess earnings amount and when collections will be withheld from his or her monthly retirement benefit. CalSTRS gives at least a 60-day notice before commencing collection. If the earnings were reported to CalSTRS in error by the employer, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

Application and Amount of the 2018 Disability Retirement Earnings Limit

The disability retirement earnings limit for the 2018 *calendar* year is \$30,300. The limit applies to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector. The limit is adjusted annually by the Teachers' Retirement Board, if necessary, by the amount of change in the California Consumer Price Index.

Application and Amount of the 2017–18 and 2018–19 Disability Allowance Earnings Limit

The disability allowance earnings limit for the 2017–18 and 2018–19 *fiscal* years is calculated individually for each member based on the member's indexed final compensation amount. Members receiving a disability allowance benefit are also subject to individual monthly and continuous six-month earnings limits based on the member's indexed final compensation. The various limits apply to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector.

SUMMARY OF REQUIRED ACTIONS

In accordance with Education Code section 22461, upon retaining the services of a retired CalSTRS member either 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 all earnings limits and the retirement incentive employment restrictions, if applicable.
- 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/general-information/working-after-retirement. If you have questions regarding the postretirement earnings limit, contact Postretirement by email at postretirement@calstrs.com or leave a voicemail at 916-414-5967.