

## EXEMPTION TO THE SEPARATION-FROM-SERVICE REQUIREMENT

In response to concerns about the difficulty employers are having in hiring teachers, including substitute teachers, during the current teacher shortage, the purpose of this circular is to inform employers that existing law provides for an exemption to the separation-from-service requirement imposed immediately after retirement if the retired CalSTRS Defined Benefit Program member or Cash Balance Benefit Program participant receiving an annuity is hired in a critically needed position and meets other eligibility criteria.

### Separation-from-Service Requirement

Pursuant to Education Code sections 24214.5 and 26812, there is a 180 calendar day separation-from-service requirement for all retired CalSTRS members and participants receiving an annuity, during which the postretirement compensation limit for the performance of retired member and participant activities is zero dollars (\$0). This limitation applies whether the member or participant is providing services either an employee of an employer, an employee of a third party (except under certain circumstances) or as an independent contractor. Any compensation paid to the member or participant during the first 180 calendar days after retirement will result in a dollar-for-dollar reduction in the benefit or annuity paid to the member or participant.

### Exemption to the Separation-from-Service Requirement

Under certain qualifying circumstances, a narrow exemption from the 180 calendar day separation-from-service requirement for a retired CalSTRS member or participant receiving an annuity would apply.

### Requirements for Exemption Qualification

In order to qualify for this exemption:

- The retired CalSTRS member or participant must:
  - Be at or above normal retirement age at the time the compensation is earned.
    - For CalSTRS 2% at 60 members and participants not subject to the Public Employees' Pension Reform Act of 2013, the normal retirement age is age 60.
    - For CalSTRS 2% at 62 members and participants subject to the Public Employees' Pension Reform Act of 2013, the normal retirement age is age 62.
  - Not begin performing retired member or participant activities until CalSTRS receives all required documentation.
  
- The governing body of the employer must:
  - Approve the retired CalSTRS member or participant appointment by adopting a resolution in a public meeting.

- The resolution must (see attached sample resolution):
  - Be adopted before the retired CalSTRS member or participant begins performing retired member or participant activities under the exemption.
  - Not be placed on a consent calendar.
  - Include the following specific information and findings:
    - The intent to seek an exemption for the retired member or participant from the 180 calendar day separation-from-service requirement.
    - The nature of the employment.
    - A finding that the appointment is necessary to fill a critically needed position before the 180 calendar day separation-from-service requirement is fulfilled.
    - A finding that the retired member or participant did not receive a retirement incentive or any financial inducement to retire from any public employer.
    - A finding that the retired member's or participant's termination of employment is not the basis for the need to acquire his or her services.
- \* In order to facilitate the process of reviewing the resolution, specify the retired member's or participant's full name.
- 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 the *Request for Separation-from-Service Requirement Exemption* form and the aforementioned resolution before the retired CalSTRS member or participant begins performing service under the exemption.
  - Notify the employer and the retired member or participant within 30 days of receipt of all required documentation that the required documentation is in compliance with the law and the service performed is exempt from the 180 calendar day separation-from-service requirement.

If the separation-from-service requirement exemption is in compliance with the law, the retired CalSTRS member or participant will only be exempt from the separation-from-service requirement. Retired Defined Benefit Program members' earnings during the 180 calendar day period will still be subject to the annual postretirement earnings limit. In 2015-16, the annual limit is \$40,321, and in 2016-17, the limit is \$41,732.

**NOTE:** If the required documentation is not in compliance with the law prior to performing retired member or participant activities, the exemption to the separation-from-service requirement does not apply, and the retired member or participant is subject to the zero dollar (\$0) earnings limit. In addition, even if the retired member is exempted from the separation-from-service requirement, retired members lose the benefits of CalSTRS Retirement Incentive Program if they were previously granted service credit under the program and return within five years to any job, including substitute teaching, with their school district, community college district, or county office of education that granted the member's incentive credit.

*[NAME OF EMPLOYER]*

**RESOLUTION FOR EXEMPTION TO THE SEPARATION-FROM-SERVICE  
REQUIREMENT PURSUANT TO SECTION 24214.5 OR 26812 OF  
THE EDUCATION CODE**

*[Resolution Number]*

WHEREAS, pursuant to Education Code section 24214.5 and 26812, there is a 180 calendar day separation-from-service requirement for all retired CalSTRS members and participants; and,

WHEREAS, all retired CalSTRS members and participants are subject to a restriction if they perform retired member activities as defined by section 22164.5 of the Education Code or retired participant activities as defined by section 26135.7 of the Education Code, during the first 180 calendar days after their most recent retirement; and,

WHEREAS, if the retired CalSTRS member or participant performed retired member or participant activities during this period, CalSTRS will reduce his or her retirement benefit or annuity one dollar for each dollar earned for performing retired member or participant activities during the 180-day period; and,

WHEREAS, there is an exemption from the 180 calendar day separation-from-service requirement for a member or participant who retires for service and is at or above normal retirement age; and,

WHEREAS, in order to qualify for this narrow exemption, the employer must appoint the retired member or 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; and,

WHEREAS, this approval by the governing body of the employer in a public meeting as reflected in a resolution must be finalized and communicated to CalSTRS before the member or participant commences to perform retired member or participant activities; and,

WHEREAS, the *[TITLE OF CHIEF EXECUTIVE OFFICER OF EMPLOYER]* must complete the *Request for Separation-from-Service Requirement Exemption* form, which must be submitted to CalSTRS and received by CalSTRS before the member or participant commences to perform retired member or participant activities,

NOW, THEREFORE, BE IT RESOLVED that this Board does provide public notice that the district is in critical need of a *[POSITION]* to *[NATURE OF THE POSITION]* because *[DESCRIBE CRITICAL NEED]*;

AND BE IT FURTHER RESOLVED that the Board wishes to meet this critical need by hiring *[NAME OF MEMBER]*, a member or participant who retired for service less than 180 days ago or who will retire;

AND BE IT FURTHER RESOLVED that this appointment is needed to fill this critical need before the 180 calendar day separation-from-service requirement is fulfilled;

