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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 2019–01
Supersedes Employer Directive 2018–01
Postretirement Earnings Limit and Disability Allowance Earnings Limit for the 2018–19 and 2019–20 Fiscal Years, and Disability Retirement Earnings Limit for the 2019 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 2018–19 fiscal year.
- The annual postretirement earnings limit for the 2019–20 fiscal year.
- The postretirement separation-from-service requirement for retired CalSTRS members and retired CalSTRS participants during the first 180 calendar days from their retirement date with CalSTRS.
- Requirements for requesting an exemption from the separation-from-service requirement.
- Restriction on hiring retired CalSTRS members and retired CalSTRS participants 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 disability retirement earnings limit for the 2019 calendar year.
- The disability allowance earnings limit for the 2018–19 and 2019–20 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 retired member or participant activities or that employs CalSTRS members receiving either a Disability Allowance or Disability Retirement benefit in any capacity.

DISCUSSION

Application of Postretirement Earnings Limits

Sections 24214 and 24214.5 of the Education Code impose limitations on retired CalSTRS members who return to work and perform retired member activities. Section 22164.5 of the Education Code defines "retired member activities" as one or more of the activities identified in subdivision (b), (c) or (d) of Education Code section 22119.5 or subdivision (b), (c) or (d) of Education Code 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.

Section 26812 of the Education Code imposes limitations on retired CalSTRS participants who return to work and perform retired participant activities. Section 26135.7 of the Education Code defines "retired participant activities" as one or more of the activities identified in subdivision (b), (c) or (d) of Education Code section 22119.5 or subdivision (b), (c) or (d) of Education Code 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 member activities or 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.

Remuneration that is not considered creditable compensation for an active member or participant under Education Code section 22119.2 or 22119.3 or Education Code section 26139 or 26139.5 should not be reported for postretirement employment unless specifically referenced in the Education Code. Notable differences include:

- Education Code section 22164.5, subdivisions (a)(2) and (3).
- Education Code section 24214, subdivision (f)(2).
- Education Code section 24214.5, subdivision (a)(2).
- Education Code section 26135.7, subdivisions (a)(2) and (3).
- Education Code section 26812, subdivision (d)(2).

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

- The retired CalSTRS member or retired CalSTRS participant is employed by a third party employer that does not participate in a California public pension system;
- The activities performed by the retired CalSTRS member or retired CalSTRS participant are not normally performed by employees of an employer; and
- The retired CalSTRS member or retired CalSTRS participant performs an assignment of 24 months or less.

Employer reporting of retired CalSTRS members and retired CalSTRS participants 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.

Annual Postretirement Earnings Limit for the 2018–19 and 2019–20 Fiscal Years

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

The postretirement earnings limit for retired CalSTRS members for the 2019–20 *fiscal* year is $46,451.

Pursuant to Education Code section 24214, 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.

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, until the member has repaid the amount of compensation that was earned in excess of the annual earnings limit. The amount of the reduction in an individual month shall be no more than the monthly allowance payable in that month, and the total amount of the reduction shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned after any reductions due to the separation-from-service requirement.

There is no annual earnings limit for retired CalSTRS participants.

Separation-From-Service Requirement

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 the 180-calendar day separation-from-service period, Education Code section 24214.5(h) requires CalSTRS to reduce the member's retirement benefit dollar-for-dollar, until the member has repaid the amount of compensation that was earned during the separation-from-service period. The amount of the reduction in an individual month shall be no more than the monthly

allowance payable in that month, and the total amount of the reduction shall not exceed the amount of the allowance payable during the first 180 calendar days after the most recent retirement date.

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.

Pursuant to Education Code section 26812, the 180-calendar day separation-from-service requirement applies to Cash Balance Benefit Program annuitants, regardless of age.

Pursuant to Education Code section 26806, if a retired CalSTRS participant receives a lump-sum retirement benefit, the benefit is not payable until 180 calendar days after the date employment was terminated. If a participant electing a lump-sum benefit performs creditable service during the 180-calendar day separation-from-service period, the retirement application will be automatically canceled.

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 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 for the appointment must be adopted before the retired CalSTRS member or retired CalSTRS participant begins performing retired member or participant activities under the exemption. The resolution approving the appointment may not be placed on a consent calendar.

The resolution must express the intent to seek an exemption from the 180-calendar day separation-from-service requirement and include the following specific information and findings:

- 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 the termination of employment of the retired CalSTRS member or retired CalSTRS participant with the employer is not the basis for the need to acquire the services of the member or participant.

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 activities 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 a retired CalSTRS member.

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.

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 the 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 Limits 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 member of the earnings limitations, and the 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 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 member of the dollar amount reported to date and reminding the member of the consequences of exceeding the earnings limit.

When a retired CalSTRS member or retired CalSTRS participant violates the 180-calendar day separation-from-service requirement or a retired CalSTRS member exceeds the annual postretirement earnings limit, CalSTRS sends a letter notifying the member or participant that the excess earnings will be withheld from the applicable monthly retirement benefit. CalSTRS gives at least a 30-day notice before commencing collection. If the earnings were reported to CalSTRS in error, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

Application and Amount of the 2019 Disability Retirement Earnings Limit
The disability retirement earnings limit for the 2019 *calendar* year is $31,500. 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 2018–19 and 2019–20 Disability Allowance Earnings Limit
The disability allowance earnings limit for the 2018–19 and 2019–20 *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 an independent contractor within the California public school system, the employer is required to:

- Notify the retired CalSTRS member of all earnings limits and also the retirement incentive employment restrictions, if applicable.
- Maintain accurate records of the retired CalSTRS member's earnings.
- Report those earnings to the retired CalSTRS 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 earnings 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.