



San Bernardino County Employees'
Retirement Association

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Area **Benefits**
Applicability **SBCERA
systemwide**

Retirees Returning to Work

POLICY NO. 032

I. Introduction

A retired person, whether retired for service or disability, shall not serve, be employed by, or be employed through a contract directly by a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as permitted by Government Code section 7522.56.

SBCERA is responsible for ensuring the proper payment of benefits to retirees who have earned and are legally entitled to those benefits, and for ensuring that the benefits it pays are limited to those to which the recipients are legally entitled. Under applicable law, including the County Employees' Retirement Act of 1937 and the Public Employees' Pension Reform Act of 2013, persons receiving retirement allowances from SBCERA may work for SBCERA participating employers only under limited circumstances.

Therefore, it is necessary for SBCERA to monitor SBCERA retirees who return to work for SBCERA's participating employers so that:

1. Benefits are paid to such re-employed retirees when, and only when, such payments comply with the law, including but not limited to sections 7522.56 and 31680.6 of the California Government Code.
2. SBCERA takes appropriate action under the law when such re-employment violates applicable limits; and proper action is taken under the law, including but not limited to reinstatement of the re-employed retiree to active membership under section 31680.7.
3. Implementation of these provisions remains consistent with the rights of members and beneficiaries, and with SBCERA's fiduciary duties to members, beneficiaries, and plan sponsors.

II. Operating Criteria

When an SBCERA participating employer requests a determination regarding a return to work arrangement of an SBCERA retiree, which the retiree will not be reinstated to active membership, the following shall apply:

A. REQUEST FOR RETURN TO WORK

1. The employer shall report the details of the return-to-work arrangement to SBCERA prior to its commencement. The report shall be signed by both the employer and the retiree, and shall contain the following information:
 - a. An acknowledgement by the employer and the retiree that they are aware of, and agree to comply with the requirements of:
 - i. Sections 7522.56 and 31680.6 of the Government Code, and
 - ii. this Policy.
 - b. The employer shall report the details of the return to work arrangement as specified on the appropriate SBCERA certification form, including but not limited to the following information:
 - i. The re-employment is necessary during an emergency to prevent stoppage of public business; or
 - ii. The employee has skills needed to perform work of limited duration.
 - iii. The work to be performed is limited to 960 hours per fiscal year; and
 - iv. The work is of limited duration (18 consecutive months).
 - v. The retiree will receive compensation that is not less than the minimum or greater than the maximum paid to the other employees performing comparable duties as listed in the employer's public available pay schedule.
 - vi. Whether the retiree is receiving a disability benefit and if so, certify that the position: is not the same position from which the member retired or include duties or activities the retiree is restricted from performing at the time of his or her disability.
 - vii. Complies with the bona fide separation requirements, as well as the requirements set forth in the Government Code section 7522.56 (f)(1), (g), and (h).
 - c. If applicable, the employer shall provide the independent contract or agreement or contract with the third-party entity.

B. LIMITED DURATION

1. Presumed Compliance - 18 Consecutive Months
 - a. Re-employment will be presumed to comply with the requirement that it be

of "limited duration" if the limit on the duration of the re-employment is 18 consecutive months or less.

2. Greater than 18 Consecutive Months

- a. If the specified ending date is more than 18 consecutive months from commencement of re-employment, the employer shall submit to SBCERA a statement explaining the limit on the duration of the re-employment. Such re-employment in excess of 18 consecutive months shall be considered of limited duration, only if all of the following are true:
 - i. Extreme Necessity - Re-employment is necessary to enable the employer to continue effective operations in light of genuinely extreme necessity that is unavoidable or could not have been anticipated. The retiree's retirement shall not, in and of itself, be considered to have given rise to the extreme necessity to which this paragraph refers;
 - ii. Completion of Work - Re-employment is limited to the completion of a discrete quantity of genuinely limited work that one would expect to be completed at a foreseeable time, or through the completion of a special project;
 - iii. Approval by the Board of Retirement - The re-employment has been approved by the Board, either prior to its commencement or, if extreme necessity requires commencement of re-employment before Board approval can be sought, at the first Board meeting after re-employment at which the matter may be considered. The Board shall determine whether the re-employment complies with all of the applicable requirements of section 7522.56 and this policy.

3. No Part-time Employment

- a. Such re-employment shall not be considered to be of limited duration if the re-employment is the functional equivalent of a permanent part-time position, or if the stated limit on the duration is such that the re-employment is effectively unlimited.

C. EMPLOYER REQUIREMENTS

1. Annual Reporting: Employers shall report the following to SBCERA not later than 10 business days after the end of each fiscal year: a list of all SBCERA retirees working in any capacity, including: direct employment or as independent contractors contracted directly with the employer, along with the total number of hours worked for each retiree during the fiscal year.
2. Notice of Violation: An employer shall notify SBCERA within two business days of the discovery that a retiree has exceeded 960 hours worked in a fiscal year or the limited duration period.
3. Recruitment Prior to and During the Return to Work of a Retiree: An employer shall be actively recruiting for a permanent replacement for the regular position being

occupied by a retiree, unless the position is temporary or seasonal.

4. Substantial Compliance: If genuine documentation regarding the re-employment of a retiree is submitted as required by this Policy and accepted by SBCERA as adequate at the time of the re-employment, this shall be considered conclusive evidence that the re-employment was commenced in compliance with applicable law. The CEO or designee shall notify the employer in writing of the acceptance of the documentation required by this policy.

D. REINSTATEMENT TO ACTIVE SERVICE

1. Reinstatement

- a. An SBCERA retiree subject to the return-to-work requirements, and employer are responsible for keeping track of the amount of hours worked so that the retiree does not exceed 960 hours in a fiscal year and is otherwise in compliance with the law. Violation of any requirement of Government Code Section 7522.56 shall result in a reinstatement to active service.

2. CEO Determination

- a. If the CEO or designee becomes aware that any retiree's return to work is in violation of applicable law including but not limited to sections 7522.56 and 31680.6 of the Government Code, the CEO shall determine:
 - i. whether to suspend the re-employed retiree's retirement allowance and restore the member to active membership,
 - ii. the effective date of such action,
 - iii. the recovery of any improperly paid benefits,
 - iv. the collection of any contributions (employer and employee) that may be owed, and
 - v. any other appropriate action.
- b. The re-employed retiree and employer shall be provided with a copy of all documents that form the basis of the recommendation. However, if the CEO determines that the hours exceeded is de-minimus [one pay-period or less] then the retiree shall not be reinstated, but will be required to stop working and shall not under any circumstances return to work for any SBCERA participating employer.

3. Appeal Rights

- a. In the event the CEO or designee denies the request for re-employment without suspension of benefits, the retiree or the employer shall have the opportunity to appeal that decision to the Board no later than 30 days from the date of the CEO's determination pursuant to Board Benefits Policy No. 025 (Requests and Appeals for Pension Benefits).

4. Board Action

- a. The Board's initial action may be appealed to an administrative hearing

governed by the applicable portions of SBCERA's *Procedures for Disability Retirement Applications and Formal Hearings*.

- b. Any further action by the Board under this paragraph shall be reviewable in Superior Court of California County of San Bernardino as a final administrative action, pursuant to section 1094.5 of the California Code of Civil Procedure.

5. Contributions

- a. Employer shall be responsible for collection and payment of employer and employee contributions to SBCERA in the event the retiree is reinstated to active service.

E. VOLUNTEER SERVICE

1. A retiree may serve without reinstatement from retirement when the retiree is performing voluntary service for a public agency and does not receive remuneration for the services. Limitations as stated in Government Code section 7522.56 are not applicable to volunteer services.

F. INDEPENDENT CONTRACTOR

1. An independent contractor or an employee of a third-party employer may not be subject to the returning retiree requirements of Government Code section 7522.56, so long as there is no common law employer-employee relationship between the retiree and an SBCERA participating employer. However, if a common law employer-employee relationship exists, the employment is subject to the restrictions of Government Code section 7522.56 even if the agreement claims the retiree is an independent contractor. If the work that will be performed by the retiree is the same or similar work performed by the retiree when the retiree was an active employee, or is work performed by an active employee of that employer, and employer-employee relationship exists, and the employment is subject to the restrictions of Government Code section 7522.56.
2. Employers considering hiring an SBCERA retiree under one of these arrangements shall request a review and determination of the potential arrangement to determine if it is subject to the returning retiree requirements of Government Code section 7522.56. The CEO shall respond in writing to the employer and retiree regarding the determination of whether the return to work is subject to the restrictions of Government Code section 7522.56.

G. LOCAL BOARDS and COMMISSIONS

1. Pursuant to section 31680.16 an SBCERA retiree may receive per diem payments for serving on non-salaried, part-time boards or commissions associated with a participating employer without reinstatement from retirement, or the loss or interruption of benefits. These retired members can only receive per diem payments authorized for all members of the board or commission, and they cannot acquire benefits, service credit, or retirement rights by their appointment or election.

H. PRIVATE SECTOR EMPLOYMENT

1. A retiree who works for a private industry employer not associated with any SBCERA

employer may work without restrictions and continue to receive his/her SBCERA retirement.

2. Exception to Private sector employment: A person employed through a temporary agency contract with an SBCERA participating employer to fill a regular position of the employer is subject to the requirements of Government Code section 7522.56, and the employer is required to report the re-employment and submit a certification to SBCERA.

Approval Signatures

| Step Description | Approver | Date |
|--------------------------------|----------------|---------|
| HR Final Review & Distribution | Iliana Carreon | 03/2023 |

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