



San Bernardino County Employees'
Retirement Association

MEMORANDUM

Date: March 27, 2020

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To: SBCERA Participating Employers

Subject: Governor's Executive Orders Re: Retirees Returning to Work
Under Statewide State of Emergency

The following is to provide guidance to SBCERA participating employers of the impact on SBCERA retirees employed under a Returning Retiree Agreement.

On March 4, 2020, Governor Gavin Newsom declared a statewide state of emergency due to the COVID-19 pandemic. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which suspended certain sections of the Public Employees' Pension Reform Act of 2013 (PEPRA). The order also suspended portions of the Government Code relating to CalPERS. The order suspended retiree return to work provisions. Specifically, the order suspended the restriction against retirees returning to work within 180 days of the date of separation. The order also suspended the 960-hour limitation on retirees who return to work. There was no specific mention regarding whether the suspension of PEPRA provisions applied to city or county retirement systems. However, on March 21, 2020, Governor Newsom issued Executive Order N-35-20, which made the returning retiree provisions of Executive Order N-25-20 specifically applicable to local governments in order to "ensure adequate staffing to appropriately respond to the COVID-19 pandemic."

Work Hour Limitations:

Retirees who are working to address the emergency situation to prevent stoppage of public business are not limited to 960 hours of work per year. Retirees who have returned to work in a position that is not related to the COVID-19 emergency remain subject to the 960 hour limitation, including the requirement of limited duration of 18 months.

Wait Period Exceptions:

Retirees who return to work in order to address the current COVID-19 pandemic do not have to wait 180 days from the date of separation to return to work.

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Timeline:

The suspension of the PEPRA provisions, as well as similar provisions in the County Employees' Retirement Law (CERL), is in effect until the state of emergency is lifted.

Compliance:

Suspension of PEPRA and CERL rules regarding returning retirees is consistent with SBCERA's tax compliance policies. Bona fide separation rules may be suspended in times of emergency under the SBCERA policies.

Reporting Requirements:

Executive Order N-25-20 requires employers to report returning retirees who are employed to address the emergency situation to the California Department of Human Resources. SBCERA does not have any current information regarding whether this provision applies to local government retirees. Employers are advised to consult the Department of Human Resources for guidance on this issue.

Continued Compliance

Employers must continue to enroll, and report retired annuitants to SBCERA. The remaining working after retirement provision in Government Code will continue to apply:

1. Prohibitions against a predetermined agreement between an employer and an impending retiree who has not attained normal retirement age, continue to remain in effect, consistent with federal law.
2. A person retired for disability, where the SBCERA Board determined the person is permanently incapacitated from performing his or her job duties, may not be returned to the same position unless the SBCERA Board determines the retiree is no longer permanently incapacitated to perform those job duties. This determination may result in the cancellation of the retiree's disability retirement payment. However, under the provisions of the Executive Order, a disabled retiree may work in a position that is not the same position from which he or she was retired for disability. The employer is responsible for adhering to any work restrictions and ensuring the person is capable of performing the duties of the assigned position.
3. Compensation paid to the retiree shall not be less than the minimum, nor exceed the maximum, paid by the employer to the other employees performing comparable duties.
4. A retired person shall not acquire service credit, retirement rights, or any other form of compensation in addition to the rate of pay cited in Government Code section 7522.56 subdivision (d).
5. Once the state of emergency is lifted, the retired person's return to work authorization will have expired. Consequently, the retiree should be terminated

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and wait the required 60 days break in service to be returned back to a returning retiree position.

SBCERA has prepared an authorization form for retirees and department heads to review and execute. The authorization form may be obtained by emailing memberservices@sbcera.org. SBCERA recommends compliance with the above and the limitations set forth on the authorization form in order to protect retiree status for those retirees who return to employment due to the COVID-19 pandemic.