

**SBCERA Resolution No. 2021-2**

**RESOLUTION OF THE BOARD OF RETIREMENT OF THE SAN BERNARDINO COUNTY  
EMPLOYEES' RETIREMENT ASSOCIATION (SBCERA) REGARDING  
COVID-19 EMERGENCY ORDERS AND STAFF ACTIONS IN RESPONSE**

**WHEREAS** on March 4, 2020, Governor Gavin Newsom declared a state of emergency for the State of California in response to the COVID-19 pandemic.

**WHEREAS** On March 12, 2020, Governor Newsom issued Executive Order number N-25-20, and on March 21, 2020, Governor Newsom issued Executive Order number N-35-20. These two Executive Orders suspended certain portions of the Government Code that affect SBCERA retirees who wish to return to work after retirement.

**WHEREAS** the two Executive Orders specifically suspended the 180 waiting period required before a retiree can return to work and the annual 960-hour work limitation per fiscal year for retirees who return to work in order to address the COVID-19 pandemic.

**WHEREAS** the Governor's Executive Orders intent is to suspend reinstatement and any hours worked by a retired person to ensure adequate staffing during the state of emergency will not be counted toward the 960 hour limit for the fiscal year.

**WHEREAS** the Executive Order did not address nor suspend the requirement that the retired person has skills needed to perform work of limited duration under Government Code section 7522.56 subdivision (c).

**WHEREAS** the SBCERA Board adopted Benefits Policy No. 032 to monitor the SBCERA retirees who return to work for SBCERA's participating employers, in order to ensure that 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.

**WHEREAS** SBCERA Board must ensure that implementation of the Executive Orders, Government Code, and its Policy provisions remain consistent with the rights of members and beneficiaries, and with its fiduciary duties to members, beneficiaries, and plan sponsors.

**NOW THEREFORE, BE IT RESOLVED**

1. In response to Governor Newsom's Executive Orders N-25-20 and N-35-20, the SBCERA Board suspends sections (1)(d) and (f) of Benefits Policy No. 032 – Retirees Returning to Work for those retirees who are returning to work with an SBCERA participating employer to address the COVID -19 pandemic. This will

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ensure that SBCERA participating employer will have adequate staffing during the declared state of emergency.

2. Regarding the requirement that work of the retired person who has skills needed to perform work of limited duration, the SBCERA Board is not suspending sections (1) (b)(ii) or (2) of Benefits Policy No. 032- Retirees Returning to Work. A retiree who has or will return to work, not in response to the COVID-19 pandemic to ensure adequate staff of a participating employer, but rather because s/he has skills needed to perform work of limited duration, shall be subjected to the 18 months limited duration standard and requirements under Benefits Policy No. 032.
3. Concerning the 18 months limitation duration standard as specified in Benefits Policy No. 032, the Board extends, by four months, the requirement to request an extension of the limited duration standard for those retired persons currently working under an existing agreement as of March 4, 2020 and whose agreement is set to expire after this date, but before or on June 4, 2020.
4. Any and all request to extend the retired person's employment after the expiration of the four months specified herein, shall be submitted and heard at the Board's June 4, 2020 meeting. Any determination to deny the extension as determined by the Board at this meeting shall be adhered to by the retired person and the employer; otherwise, the retired person risks reinstatement to active membership and suspension of retirement benefits. Effective June 4, 2020, the four months extension shall expire and the 18 months limited duration shall remain in effect, including the requirement to request an extension of employment beyond the 18 months limited duration standard or any such extension to continue work under a re-employment certification.
5. Sections of Benefits Policy No. 032 not expressly suspended herein, shall remain in effect.
6. The SBCERA participating employer shall continue to comply with all provisions of Government Code sections 7522.56 and 31680.6, including Benefits Policy No. 032 not expressly suspended by the Governor's Executive Orders or herein.
7. The SBCERA Board delegates to staff the responsibility to prepare and provide an authorization form for participating employers and retired persons to execute, authorizing the retired person to return to work pursuant to the suspended

provisions as addressed herein in order to address the COVID-19 pandemic to ensure adequate staffing during the declared state of emergency.

8. SBCERA staff shall advise participating employers that the waiting period and hour limitations have been suspended for the duration of the emergency. Staff shall further advise participating employers that the SBCERA limited duration of employment rules have been suspended for those returning retirees who are working to address the emergency so that there is not a stoppage of the public's business.

9. Suspension of the retired person work hour limitation and wait period exceptions shall remain in place until the state of emergency is lifted.

10. Once the state of emergency is lifted, a retired person, who returned to work in response to the COVID-19 pandemic by filing a valid COVID-19 Emergency Returning Retiree Authorization Form with SBCERA, has 30 days from the date the state of emergency was lifted to submit an application requesting to extend his or her reemployment period beyond the limited duration or prior certification period. The request will be placed on the Board's next regularly scheduled agenda. In the event there is an intervening period between the lifted state of emergency and the Board meeting, the retired person may opt to continue to work until the Board's determination on the retired person's request.

- 9.11. In all cases, the employer and/or retired person has the burden of establishing, based on the circumstances, that the reemployment meets one of the criteria detailed in SBCERA Benefits Policy No. 032 section (2). If the employer or retired person fails to establish one of the criteria for the reemployment to extend beyond the 18 months or prior certification and the Board denies the request, then the Board's decision is final and the retired person must cease work. In the alternative, if the Board approves the reemployment, then the retired person shall be subject to the limitations set forth in Government Code section 7522.56 and Benefits Policy No. 032.

**IN WITNESS WHEREOF**, the above Resolution for SBCERA is hereby adopted  
by the BOARD on this 7<sup>th</sup> day of May 2020.

**SAN BERNARDINO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION**

By: Janice RutherfordNeal Waner, Chair

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STATE OF CALIFORNIA                     )  
                                                      )       ss.  
COUNTY OF SAN BERNARDINO       )

I, **Deborah S. Cherney**, Secretary to the BOARD of SBCERA, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the BOARD, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of May 7, 2020.

Deborah S. Cherney