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San Bernardino County Employees'
Retirement Association

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Retirees Returning to Work

POLICY NO. 032

Introduction

SBCERA is responsible for ensuring the proper payment of benefits to retirees who have earned and are legally entitled to those benefits, and also 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 employers only under limited circumstances. Thus, it is necessary for SBCERA 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. Further, SBCERA must ensure that, when such re-employment violates applicable limits, 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. Finally, SBCERA must ensure that implementation of these provisions remains consistent with the rights of members and beneficiaries, and with its fiduciary duties to members, beneficiaries, and plan sponsors.

Operating Criteria

When an SBCERA participating employer employs or proposes to employ an SBCERA retiree, whether as an employee or through a contract directly with the employer, but intends not to restore that retiree to active membership, the following shall apply:

1. The employer shall report the proposed re-employment to SBCERA prior to its commencement. The report shall be signed by both the employer and the employee, and shall contain at least the following information:
 - a. An acknowledgement by the employer and the employee 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. Certification that one of the following is true:
 - 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.
 - c. An explanation of the limit or limits on the duration of the re-employment.
 - d. Certification that the employee will not or did not commence re-employment within 180 days following the date of retirement, or, if re-employment commenced or will commence within 180 days of retirement, that the employee did not receive a retirement incentive upon retirement and that one or more of the following is true:
 - i. that the employee is a public safety officer or firefighter, and that the re-employment is for the performance of functions regularly performed by a public safety officer or firefighter; or
 - ii. that the re-employment is necessary to fill a critically needed position before 180 days have passed, and has been approved by the governing body of the employer in a public meeting on the non-consent calendar.
 - e. Certification that the employee has not, during the twelve months prior to re-employment, received any unemployment insurance compensation arising out of the employee's prior employment with an SBCERA participating employer.
 - f. That the employee will not work more than 960 hours in any fiscal year ending June 30.
 - g. That the employee's pay during re-employment will be not less than the minimum, nor greater than the maximum, paid to other employees performing comparable job duties.
 - h. That the employee understands that while SBCERA and the employer will cooperate with the employee and with one another to facilitate compliance, compliance is ultimately the employee's responsibility, and failure to comply with the requirements of Government Code sections 7522.56 and 31680.6, as implemented through this Policy, may, at the discretion of the Board of Retirement (Board), result in the following, effective on the date upon which the re-employment ceased to be in compliance with those sections:
 - i. Reinstatement of the employee to active membership status, with a suspension of any retirement benefit payments;
 - ii. A requirement that all retirement benefit payments received during any unlawful re-employment be returned to SBCERA, with interest;
 - iii. The collection by SBCERA from both the employee and employer, as applicable, of contributions on any pay received by the employee during any period of unlawful re-employment; and
 - iv. The employee earning a new benefit for the period of re-employment, pursuant to section 31680.7.
2. Re-employment will be presumed to be in compliance with the requirement that it be of "limited duration" if the limit on the duration of the re-employment is eighteen (18) months or less. If there is no specified ending date for the re-employment, or if the specified ending date is more than eighteen 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 eighteen (18) months shall be considered of limited duration, despite having no stated ending date, only if all of the following are true:
- a. 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;

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- b. 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;
- c. The re-employment has been approved by the Board, either prior to its commencement or, if the extreme necessity requires commencement of re-employment before Board approval can be sought, then at the first Board meeting thereafter at which the matter may be considered, pursuant to findings that all of the applicable requirements of section 7522.56 and of this policy have been complied with.

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.

- 3. Retirees who have returned to work prior to the effective date of Issue No. 1.0 of this policy shall be treated as if their return to work commenced on the effective date of Issue No. 1.0 of this policy. Retirees who have returned to work, or who have submitted certification forms to SBCERA, after the effective date of Issue No. 1.0 of this policy but prior to the effective date of Issue No. 2.0 of this policy shall be treated in the manner provided for in Issue No. 1.0.
- 4. SBCERA staff shall monitor compliance with this policy through methods determined by the Chief Executive Officer (CEO) or designee, which may include, but shall not be limited to, the following:
 - a. Requiring employers to report to SBCERA when any re-employed retiree has worked at least 700 hours in any fiscal year ending June 30 or to provide SBCERA with access to the employer's payroll system in a manner that permits SBCERA staff to directly access such information;
 - b. Requiring employers to report when a re-employed retiree has less than six months' duration remaining on a period of re-employment that was commenced with a stated end-date, and any instance in which such an employee continues to work beyond the originally stated end-date, or in which the employer extends the originally stated end-date with an explanation of such extension;
 - c. Requiring documentation of compliance with any of the requirements of section 7522.56.
- 5. 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.
- 6. If the CEO or designee becomes aware that any retiree's re-employment is in violation of applicable law including but not limited to sections 7522.56 and 31680.6 of the Government Code, the matter shall be presented to the Board for a determination as to whether to suspend the re-employed retiree's retirement allowance and restore the member to active membership, the effective date of such action, the recovery of any improperly paid benefits, the collection of any contributions that may be owed, and any other appropriate action. The re-employed retiree shall be provided with a copy of all documents that form the basis of the recommendation no later than seven days prior to the Board meeting at which said action is to be taken. In the event the CEO or designee denies the request for re-employment without suspension of benefits, the member or the employer shall have the opportunity to appeal that decision to the Board pursuant to paragraph 3(b) of Board Benefits Policy No. 025 (Requests for Pension Benefits and the Presentation of Supporting Information). 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 1094.6 of the California Code of Civil Procedure.

Attachments

No Attachments

Applicability

SBCERA, SBCERA Internal

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