



## **Guidance on Return-to-Work Laws for Members of the Teachers' and State Employees' Retirement System (TSERS)**

Over time, the North Carolina General Assembly has enacted, and amended, laws governing the return to work for all retirees of the North Carolina Retirement Systems.

Return-to-work laws apply differently to members of the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS), so before you decide to return to work for an employer under the Retirement System from which you retired, you should familiarize yourself with the laws governing return-to-work. As a retiree, you are responsible for knowing and abiding by the return-to-work laws that apply to your particular situation.

***Please be aware that violation of the return-to-work laws could cause you to incur financial penalties, possible loss of retirement benefits and/or possible loss of health coverage.***

The following return-to-work topics will be explained and discussed below, in separate sections:

- Financial penalty if you are a TSERS retiree who returns to work for a TSERS employer during the required 6-month break
- Returning to work with a private entity
- Returning to work after a 6-month break as a contributing TSERS member and therefore stopping your TSERS retirement benefit voluntarily
- Returning to work after a 6-month break when you should have again become a contributing TSERS member, violating the return-to-work laws, and consequently having your TSERS retirement benefit suspended or cancelled involuntarily
- Returning to work after a 6-month break for a TSERS employer in a position not eligible for TSERS membership, violating your earnings limitation, and consequently having your TSERS retirement benefit suspended or cancelled involuntarily
- Returning to work after a 6-month break for a TSERS employer in a position not eligible for TSERS membership, not exceeding your earnable allowance limit, and continuing to receive your monthly TSERS retirement benefit
- Returning to service for a TSERS employer without a penalty as an unpaid bona fide volunteer, a school board member, or a member of a board of trustees of a community college or of any constituent institution of the University of North Carolina

If you are retired from the Consolidated Judicial Retirement System (CJRS) or the Legislative Retirement System (LRS), or retired from the TSERS and wish to work in a position under the CJRS, or you are receiving a disability benefit from any System, you should contact the Retirement Systems Division for information on return-to-work laws that apply to you.

## **I. Financial Penalty if you are a TSERS Retiree who Returns to Work for a TSERS Employer During the Required 6-Month Break**

***If you retired under TSERS, to avoid a financial penalty, you must be retired at least 6 months before performing any services for a TSERS employer in any capacity (except as a school board member, a member of a board of trustees of a community college or of any constituent institution of the University of North Carolina, or a volunteer in a position normally designated as an unpaid bona fide volunteer position, as described on page 4).*** As an active employee, you may not establish an agreement for post-retirement employment with a TSERS employer.

The financial penalty for returning to work for a TSERS employer on a part-time, temporary, interim, or fee for service basis, during the 6 months immediately following TSERS retirement, will be the lesser of the following as determined by the Retirement System:

- You will be deemed to have retired the month after the month you ceased to perform services for the employer and repay all retirement benefits received and the cost of State-provided State Health Plan premiums until that date; **or**
- You will be required to make a lump sum payment to the retirement system equal to three times the compensation earned during the 6-month period.

If you return to work for a TSERS employer in a position that requires TSERS membership during the 6 months immediately following your retirement date, your TSERS benefits will be cancelled retroactively to your retirement date, and you must repay all retirement benefits received and the cost of state-provided State Health Plan premiums since your retirement date. If your retirement benefit is cancelled, your State Health Plan retiree group coverage also will be cancelled.

***NOTE: If you are reemployed in a permanent TSERS position which requires at least 30 hours per week of work on a recurring basis for 9 months per year, your retirement payment must be stopped and you will again become a contributing TSERS member.***

## **II. Returning to Work with a Private Entity**

If you are employed with a private-sector agency or a government agency that does not participate in TSERS (i.e., federal government, local government, or another state government that does not participate in this Retirement System) and you do no work for a TSERS agency, your TSERS lifetime retirement benefit will continue. In other words, the return-to-work laws do not restrict you from gaining employment in general, but rather these laws place certain restrictions on you if you return to doing work for an agency participating in TSERS.

However, if you return to work for a private entity, such as a temporary staffing agency or a Limited Liability Corporation (LLC), which then assigns you to do work for, or “leases” you back to, a TSERS employer, you will be subject to the return-to-work laws when such an arrangement is merely a pass-through arrangement or is seen as an attempt to circumvent the applicable return-to-work laws. Please refer to Sections IV and V below.

### **III. Returning to Work After a 6-Month Break as a Contributing TSERS Member and Therefore Stopping Your TSERS Retirement Benefit Voluntarily**

After the 6-month break, if you go back to work in a regular contributing TSERS position which requires you to be a permanent employee who works at least 30 hours per week for 9 months per year, your TSERS retirement benefit must be suspended the month following the month in which you return to work, and you will again be a contributing member of TSERS in the month in which you are restored to service. When you are no longer employed by a participating TSERS agency, your TSERS retirement benefits may be reinstated. However, you must re-apply for retirement.

### **IV. Returning to Work After a 6-Month Break When You Should Have Again Become a Contributing TSERS Member, Violating the Return-to-Work Laws, and Consequently Having your TSERS Benefit Suspended or Cancelled Involuntarily**

After the 6-month break, if the Retirement System is not notified immediately upon your return to work in a position in which you should have become a contributing TSERS member, all TSERS benefits paid to you beginning with the month following the month you returned to TSERS employment must be repaid to the Retirement System. You can choose to go back to work in any position at an agency that participates in the TSERS at any time after the 6-month break, but if you work in a TSERS position which requires you to be a permanent employee who works at least 30 hours per week for 9 months per year, your TSERS retirement benefit must be stopped on the first day of the month following the month of reemployment and you must again become a contributing member of the TSERS in the month in which you are restored to service. When you are no longer employed by a participating TSERS agency, your TSERS retirement benefits may be reinstated. However, you must re-apply for retirement.

### **V. Returning to Work After a 6-Month Break for a TSERS Employer in a Position Not Eligible for TSERS Membership, Violating your Earnings Limitation, and Consequently Having Your TSERS Retirement Benefit Suspended or Cancelled Involuntarily**

After the 6-month break, if you return to work with a TSERS employer in a position that does not require membership in TSERS, you are subject to the earnings restrictions below. You can earn whichever is greater:

- 50% of your gross pre-retirement salary (excluding termination payments) or
- \$32,940 (2018 amount).

The above amounts are adjusted annually on January 1 according to the Consumer Price Index, which is a national measure of increase in the cost of living from one year to the next. These earnings restrictions apply for the 12 months immediately following retirement and for each calendar year following the year of retirement.

If you abide by the waiting period rules but exceed the earnings limitation, your TSERS retirement benefit must be suspended on the first day of the month following the month in which you exceeded

the earnings limitation and will remain suspended for the remainder of that calendar year. Your TSERS benefit will be reinstated on January 1 of the following year. If you do not inform the Retirement System at the time you exceed your earnings limitation, your TSERS retirement benefit will be retroactively suspended to the effective date of the violation once notice is received by the Retirement System, and all TSERS retirement benefits paid and the cost of state-provided State Health Plan premiums during this period must be repaid to the Retirement System. If the period of time that you are in violation of the return-to-work laws is extensive, the amount required to be repaid will be extensive as well.

#### **VI. Returning to Work After a 6-Month Break for a TSERS Employer in a Position Not Eligible for TSERS Membership, Not Exceeding your Earnable Allowance Limit, and Continuing to Receive your Monthly TSERS Benefit**

After the 6-month break, if you are not in violation of the return-to-work laws, you will receive your monthly TSERS retirement benefit as well as a paycheck from your new TSERS position. In order for you to continue receiving your monthly TSERS benefit, you must be reemployed on a part-time, interim, temporary, or contractual basis, or otherwise perform work for the TSERS agency on any basis that does not require membership in the TSERS, and not exceed your earnable allowance limit. You will be subject to return-to-work laws based on the nature of the particular work you perform for a participating TSERS employer, regardless of your job classification or your technical employment status (which may include being assigned work for a participating employer by a private company such as a temporary staffing agency, or working for a limited liability corporation).

Please note that temporary and interim employment positions with a TSERS employer should have set employment ending dates; otherwise, these positions may not be considered to be temporary or interim. The agency's mere label for the position is not dispositive, as the facts may demonstrate something other than a temporary or interim position. As long as you are reemployed with a TSERS employer in a position that does not require membership in TSERS, you will not pay any contributions into the Retirement System and, as such, will not accrue any new service credit, and will not get the benefits of a "second retirement."

#### **VII. Returning to Service Without a Penalty for a TSERS Employer as an Unpaid Bona Fide Volunteer, a School Board Member, or a Member of a Board of Trustees of a Community College, or of any Constituent Institution of the University of North Carolina**

If you return to work at any time after retirement as a school board member, a member of a board of trustees of a community college or of any constituent institution of the University of North Carolina, or an unpaid bona fide volunteer, such work will not count for purposes of the return-to-work laws.

You may serve without affecting your TSERS retirement benefits as unpaid bona fide volunteer for a TSERS employer, performing service in a position in which any individual performing that type of service would not be paid. You will be subject to a penalty if other individuals performing that type of service are typically paid.

If you wish to volunteer a few hours a week selling concessions at an athletic game or assisting with fundraisers, among other activities, you may do so in the first 6 months following retirement. You cannot volunteer as a classroom teacher, for example, to hold a job open for the first six months after retirement, as that would violate both federal law and state statutes [G.S. § 135-1(20)] prohibiting an “intent or agreement, express or implied, to return to service.”

Volunteering is not employment; therefore, you cannot volunteer to fill a vacancy that is normally a paid position with a TSERS employer. The volunteer work must be performed without promise or expectation of compensation. If volunteering today helps you secure a paid position in the future, that is a form of compensation, and such an arrangement is not permitted.

There are some “volunteer” situations that are unclear, for example duties sometimes performed by paid employees and sometimes performed by parent or community volunteers. If you are considering volunteering in one of those roles, we strongly suggest that you provide the Retirement System with a full written description of the role you are considering so that we can provide additional guidance to you.

### ***Return-to-Work Laws at a glance...***

**As a Teachers’ and State Employees’ Retirement System (TSERS) retiree, if you wish to return to work with an TSERS employer and continue to receive your TSERS monthly retirement benefit, you must meet the following conditions:**

- You must be retired at least 6 months before returning to work for a TSERS employer in any capacity (except as a school board member, a member of a board of trustees of a community college or of any constituent institution of the University of North Carolina, or an unpaid bona fide volunteer).
- You must work in a position that does not require membership in TSERS. (NOTE: If you are reemployed in a TSERS position which requires you to be a permanent employee who works at least 30 hours per week for 9 months per year, your retirement payment must be stopped and you will again become a contributing TSERS member.)
- You are subject to the earnings restrictions below. You can earn whichever is greater:
  - 50% of your gross pre-retirement salary (excluding termination payments) or
  - \$32,940 (2018 amount).

These earnings restrictions apply for the 12 months immediately following retirement and for each calendar year following the year of retirement.

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## ***Return-to-Work Laws at a glance... (continued)***

### **Important Points to Remember:**

- If you return to work for a TSERS employer and you do not follow the return-to-work laws, your TSERS retirement benefit may be cancelled and all TSERS benefits paid to you and the cost of state-provided State Health Plan premiums may be required to be repaid to the Retirement System. If the period of time that you are in violation of the return-to-work laws is extensive, the amount required to be repaid will be extensive as well.
- Your State Health Plan coverage will be suspended during the period of time your TSERS retirement benefit is suspended. If your benefit is suspended and later reinstated, **your State Health Plan retiree group coverage will not be reinstated retroactively. As a result, you may experience a lapse in your health coverage** which means you may not have health coverage for a month or more.
- If you have any questions regarding the TSERS return-to-work laws or how they apply to your specific situation, you should contact the Retirement System Division's Member Services unit at 1-877-627-3287.

If you are retired from the Consolidated Judicial Retirement System (CJRS) or the Legislative Retirement System (LRS), or retired from TSERS and wish to work in a position under CJRS, or if you are receiving a disability benefit from any System, different laws apply; you should contact the Retirement Systems Division for additional information.

If you are receiving a Disability Income Plan of North Carolina (DIPNC) or TSERS disability retirement benefit, please visit the Disability section on our website at [www.myncretirement.com](http://www.myncretirement.com) and click on "DIPNC Benefits for TSERS and ORP Members" or "TSERS Disability Retirement Benefits" to view the Frequently Asked Questions regarding returning to work.