

February 22, 2023

TO: All County Superintendents of Schools
District Superintendents of Schools
Charter School Administrators
Community College Districts
Other Employing Agencies

FROM: Cassandra Lichnock
Chief Executive Officer

SUBJECT: Employer Directive 2023-01
Supersedes Employer Directive 2022-03
Postretirement Earnings Limit and Disability Allowance Earnings Limit for the
2022–23 and 2023–24 Fiscal Years, and Disability Retirement Earnings Limit for
the 2023 Calendar Year

PURPOSE

This employer directive is intended to inform and remind employers of:

- The application of the earnings limit for retired DB members.
- The annual postretirement earnings limit for the 2022–23 fiscal year.
- The annual postretirement earnings limit for the 2023–24 fiscal year.
- The postretirement separation-from-service requirement for retired DB members and retired CB participants during the first 180 calendar days from their retirement date with CalSTRS.
- Requirements for requesting an exemption from the separation-from-service requirement.
- Restriction on hiring retired DB members and retired CB participants in classified positions.
- Retirement incentive restrictions.
- Requirements for employer communication regarding the earnings limits and, if applicable, the retirement incentive restrictions when hiring retired DB members. Also, the employer requirements regarding maintaining accurate records and reporting postretirement earnings to CalSTRS.
- The CalSTRS postretirement excess earnings notification process.
- The disability retirement earnings limit for the 2023 calendar year.
- The disability allowance earnings limit for the 2022–23 and 2023–24 fiscal years.
- Sample board resolution

SCOPE

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts and any agency that employs retired members of the

Defined Benefit (DB) Program (referred to in this directive as “retired DB members”) or retired participants of the Cash Balance (CB) Benefit Program (referred to in this directive as “retired CB participants”) to perform retired member or participant activities or that employs CalSTRS members receiving either a Disability Allowance or a Disability Retirement benefit in any capacity.

DISCUSSION

Application of Postretirement Earnings Limits

Sections 24214 and 24214.5 of the Education Code impose limitations on retired DB members who return to work and perform retired member activities. Section 22164.5 of the Education Code defines “retired member activities” as one or more of the activities identified in subdivision (b), (c) or (d) of Education Code section 22119.5 or subdivision (b), (c) or (d) of Education Code section 26113 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor, including as a consultant, within the California public school system.

Section 26812 of the Education Code imposes limitations on retired CB participants who return to work and perform retired participant activities. Section 26135.7 of the Education Code defines “retired participant activities” as one or more of the activities identified in subdivision (b), (c) or (d) of Education Code section 22119.5 or subdivision (b), (c) or (d) of Education Code section 26113 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor, including as a consultant, within the California public school system.

The annualized rate of pay for retired member activities or retired participant activities may not be less than the minimum, nor can it exceed the maximum, paid by the employer to other employees performing comparable duties.

Notable differences between reportable compensation in active membership and postretirement employment include:

- Education Code section 22164.5, subdivisions (a)(2) and (3).
- Education Code section 24214, subdivision (f)(2).
- Education Code section 24214.5, subdivision (a)(2).
- Education Code section 26135.7, subdivisions (a)(2) and (3).
- Education Code section 26812, subdivision (d)(2).

Retired DB members and retired CB participants employed by a third party are excluded from the postretirement earnings limits and related provisions provided they meet *all* of the following criteria:

- The retired DB member or retired CB participant is employed by a third-party employer that does not participate in a California public pension system.

- The activities performed by the retired DB member or retired CB participant are not normally performed by employees of an employer.
- The retired DB member or retired CB participant performs an assignment of 24 months or less.

Employer reporting of retired DB members and retired CB participants who are employed by a third party under the narrow conditions above is not required. CalSTRS has not identified any example of service that would meet these criteria.

Annual Postretirement Earnings Limit for the 2022–23 and 2023–24 Fiscal Years

The postretirement earnings limit for retired DB members for the 2022–23 fiscal year is \$49,746.

The postretirement earnings limit for retired DB members for the 2023–24 fiscal year is \$50,655.

Pursuant to Education Code section 24214, the limit is adjusted annually by CalSTRS and is equal to one-half of the median final compensation amount for all members who retired for service during the fiscal year ending in the previous calendar year.

If a retired DB member earns compensation for performing retired member activities in excess of the annual postretirement earnings limit, Education Code section 24214(g) requires CalSTRS to reduce the member's retirement benefit dollar for dollar, until the member has repaid the amount of compensation that was earned in excess of the annual earnings limit. The amount of the reduction in an individual month shall be no more than the monthly allowance payable in that month, and the total amount of the reduction shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned after any reductions due to the separation-from-service requirement.

There is no annual earnings limit for retired CB participants.

Separation-From-Service Requirement

Pursuant to Education Code section 24214.5, there is a 180-calendar day separation-from-service requirement for all retired DB members, regardless of age, during which the postretirement compensation limit for the performance of retired member activities is zero dollars (\$0).

If a retired DB member earns compensation for performing retired member activities during the 180-calendar day separation-from-service period, Education Code section 24214.5(h) requires CalSTRS to reduce the member's retirement benefit dollar for dollar, until the member has repaid the amount of compensation that was earned during the separation-from-service period. The amount of the reduction in an individual month shall be no more than the monthly allowance payable in that month, and the total amount of the reduction shall not exceed the amount of the allowance payable during the first 180 calendar days after the most recent retirement date.

This restriction is in addition to the annual postretirement earnings limit. Any amount the retired DB member receives during the first 180 calendar days of retirement will also count against the annual postretirement earnings limit for the appropriate fiscal year.

Pursuant to Education Code section 26812, the 180-calendar day separation-from-service requirement applies to Cash Balance Benefit Program annuitants, regardless of age.

Pursuant to Education Code section 26806, if a retired CB participant receives a lump-sum retirement benefit, the benefit is not payable until 180 calendar days after the date employment was terminated. If a participant electing a lump-sum benefit performs creditable service during the 180-calendar day separation-from-service period, the retirement application will be automatically canceled.

Exemption to the Separation-From-Service Requirement

There is a narrow exemption from the 180-calendar day separation-from-service requirement for a retired DB member or retired CB participant under certain circumstances. To qualify for this exemption, the retired DB member or retired CB participant must be at or above normal retirement age at the time the compensation is earned, and the employer must appoint the retired DB member or retired CB participant to a critically needed position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution. The resolution for the appointment must be adopted before the retired DB member or retired CB participant begins performing retired member or participant activities under the exemption. The resolution approving the appointment may not be placed on a consent calendar.

The resolution must express the intent to seek an exemption from the 180-calendar day separation-from-service requirement and include the following specific information and findings:

- The nature of the employment.
- A finding that the appointment is needed to fill a critically needed position before the 180-calendar day separation-from-service requirement is fulfilled.
- A finding that the member or participant did not receive a retirement incentive or any financial inducement to retire from any public employer.
- A finding that the termination of employment of the retired DB member or retired CB participant with the employer is not the basis for the need to acquire the services of the member or participant.

Please see the end of this document for a sample resolution.

To qualify for this exemption:

- The retired DB member or retired CB participant must not begin performing retired member or participant activities until CalSTRS receives all required documentation.
- The retired DB member or retired CB participant must be at or above normal retirement age at the time the compensation is earned (age 60 for a CalSTRS 2% at 60 member and participant not subject to the California Public Employees' Pension Reform Act of 2013 [PEPRA], and age 62 for CalSTRS 2% at 62 members and participants subject to PEPRA).

- The appointment is necessary to fill a critically needed position and must be filled before the retired DB member's or retired CB participant's 180-calendar day separation-from-service period has passed since the member's or participant's most recent retirement date.
- The termination of employment of the retired DB member or retired CB participant with the employer must not be the basis for the need to acquire the services of the member or participant.

The retired DB member or retired CB participant must not have received a retirement incentive or any financial inducement to retire from any public employer. Education Code sections 24214.5 and 26812 clarify what constitutes a "financial inducement to retire" that would prohibit a retired DB member or retired CB participant from being eligible for an exemption from the separation-from-service requirement. "Financial inducement to retire" includes, but is not limited to, any form of compensation or other payment that is paid directly or indirectly by a public employer to the member, even if not in cash, either before or after retirement, if the participant retires for service on or before a specific date or specific range of dates established by a public employer on or before the date the inducement is offered.

When applying for the separation-from-service requirement exemption, the superintendent, the county superintendent of schools or the chief executive officer of a community college must complete the *Request for Separation-From-Service Requirement Exemption* (SR-1897) form, which is available in "Reference Items" on the Secure Employer Website. The annualized rate of pay must be provided on the form to ensure compliance with Education Code section 24214(b). CalSTRS must receive this form and the aforementioned resolution indicating the above information to substantiate the eligibility of the retired DB member or retired CB participant for the exemption before the member or participant begins performing service under the exemption.

CalSTRS must notify the employer and the retired DB member or retired CB participant within 30 days of receiving the required documentation whether the activities performed will be subject to or exempt from the 180-calendar day separation-from-service requirement.

If the separation-from-service requirement exemption is approved, the retired DB member will only be exempt from the separation-from-service requirement. Any earnings during the 180-calendar day period will still be subject to the annual postretirement earnings limit for a retired DB member. For the retired CB participant, whose separation-from-service exemption is approved, the exemption is applicable to the separation-from-service requirement only since there is no annual earnings limit for retired CB participants.

Classified Position Restrictions

Education Code section 45134 precludes retired DB members and retired CB participants from employment in classified positions in the California public school system except for as an aide in certain circumstances.

Retired CalPERS Postretirement Employment Restrictions

If the employee is a CalSTRS and CalPERS member, ask the employee to contact CalPERS at 888-225-7377 to determine the impact returning to work would have on the CalPERS benefit.

Retirement Incentive Restrictions

Members who retired with a CalSTRS retirement incentive under Education Code section 22714 will lose the increased service credit attributable to the retirement incentive if they return to employment within five years of receiving the incentive in any job, including substitute teaching or consulting, as an employee, independent contractor or employee of a third party with the school district, community college district or county office of education that granted the retirement incentive.

Employer Requirements for Notification of Postretirement Earnings Limits and Employment Restrictions, and Required Reporting of Postretirement Earnings

Upon retaining the services of a retired DB member, Education Code section 22461 requires employers to notify the member of the earnings limitations and the employment restrictions for those who receive retirement incentives, regardless of whether the retired DB member performs the services as an employee of the employer, an employee of a third party or an independent contractor, including as a consultant. Employers must also report the retired member's earnings to CalSTRS each month.

When contracting with a third party, it is suggested the employer require the breakdown of earnings for each retired DB member to meet this obligation to report all earnings for the performance of retired member activities.

All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

CalSTRS Postretirement Excess Earnings Notification Process

CalSTRS sends an *Initial Postretirement Earnings Letter* to the retired DB member when postretirement earnings for the current fiscal year are initially reported by the employer. The *Initial Postretirement Earnings Letter* informs the member of the current earnings limit and describes what occurs if the limit is exceeded. When the employer reports postretirement earnings for the current fiscal year equal to one-half of the annual postretirement earnings limit, CalSTRS sends a second letter, the *Postretirement Earnings Mid-Limit Letter*, notifying the member that their reported earnings have reached one-half of the earnings limit and reminding the member of the consequences of exceeding the earnings limit.

When a retired DB member or retired CB participant violates the 180-calendar day separation-from-service requirement or a retired DB member exceeds the annual postretirement earnings limit, CalSTRS sends a letter notifying the member or participant that the excess earnings will be withheld from the applicable monthly retirement benefit. CalSTRS gives at least a 30-day notice before commencing collection. If the earnings were reported to CalSTRS in error, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

Application and Amount of the 2023 Disability Retirement Earnings Limit

The disability retirement earnings limit for the 2023 *calendar* year is \$37,200. The limit applies to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector. The limit is adjusted annually by the Teachers' Retirement Board, if necessary, by the amount of change in the California Consumer Price Index.

Application and Amount of the 2022–23 and 2023–24 Disability Allowance Earnings Limit

The disability allowance earnings limit for the 2022–23 and 2023–24 *fiscal* years is calculated individually for each member based on the member's indexed final compensation amount. Members receiving a disability allowance benefit are also subject to individual monthly and continuous six-month earnings limits based on the member's indexed final compensation. The various limits apply to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector.

SUMMARY OF REQUIRED ACTIONS

In accordance with Education Code section 22461, upon retaining the services of a retired DB member either as an employee of an employer, an employee of a third party or an independent contractor, including as a consultant, within the California public school system, the employer is required to:

- Notify the retired DB member of all earnings limits and the retirement incentive employment restrictions, if applicable.
- Maintain accurate records of the retired DB member's earnings.
- Report those earnings to the retired DB member and to CalSTRS monthly, using Member Code 2 and Assignment Code 61, regardless of the method of payment or the fund from which the payments were made.

To learn more about postretirement earnings limitations, visit [CalSTRS.com/general-information/working-after-retirement](https://www.calstrs.com/general-information/working-after-retirement).

If you have questions regarding the service retirement postretirement earnings limits, contact us by email at postretirement@calstrs.com or leave a voicemail at 916-414-5967.

For questions regarding the disability allowance or disability retirement earnings limits, email DaSBDDisabilitySvcMlbx@CalSTRS.com or leave a voicemail at 916-414-5785.

SAMPLE BOARD RESOLUTION

[NAME OF EMPLOYER]

RESOLUTION FOR EXEMPTION TO THE SEPARATION-FROM-SERVICE

REQUIREMENT PURSUANT TO SECTION 24214.5 OR 26812 OF

THE EDUCATION CODE

[Resolution Number]

WHEREAS, pursuant to Education Code sections 24214.5 and 26812, there is a 180-calendar day separation-from-service requirement for all retired CalSTRS members and participants; and,

WHEREAS, all retired CalSTRS members and participants are subject to a restriction if they perform retired member activities as defined by section 22164.5 of the Education Code or retired participant activities as defined by section 26135.7 of the Education Code, during the first 180 calendar days after their most recent retirement; and,

WHEREAS, if the retired CalSTRS member or participant performed retired member or participant activities during this period, CalSTRS will reduce their retirement benefit or annuity one dollar for each dollar earned for performing retired member or participant activities during the 180-day period; and,

WHEREAS, there is an exemption from the 180-calendar day separation-from-service requirement for a member or participant who retires for service and is at or above normal retirement age; and,

WHEREAS, to qualify for this narrow exemption, the employer must appoint the retired member or participant to a critically needed position that has been approved by the governing body of the employer in a public meeting as reflected in a resolution; and,

WHEREAS, this approval by the governing body of the employer in a public meeting as reflected in a resolution must be finalized and communicated to CalSTRS before the member or participant commences to perform retired member or participant activities; and,

WHEREAS, the [TITLE OF CHIEF EXECUTIVE OFFICER OF EMPLOYER] must complete the *Request for Separation-from-Service Requirement Exemption* form, which must be submitted to CalSTRS and received by CalSTRS before the member or participant commences to perform retired member or participant activities,

NOW, THEREFORE, BE IT RESOLVED that this Board does provide public notice that the district is in critical need of a [POSITION] to [NATURE OF THE POSITION] because [DESCRIBE CRITICAL NEED];

AND BE IT FURTHER RESOLVED that the Board wishes to meet this critical need by hiring [NAME OF MEMBER], a member or participant who retired for service less than 180 days ago or who will retire;

AND BE IT FURTHER RESOLVED that this appointment is needed to fill this critical need before the 180-calendar day separation-from-service requirement is fulfilled;

AND BE IT FURTHER RESOLVED that this member or participant did not receive a retirement incentive or any financial inducement to retire from any public employer;

AND BE IT FURTHER RESOLVED that the retired member's or participant's termination of employment is not the basis for the need to acquire their services;

AND BE IT FURTHER RESOLVED that the earnings for retired member activities during the 180 calendar days will still be subject to the annual postretirement earnings limit for the Defined Benefit Program;

AND BE IT FURTHER RESOLVED that this member or participant will not commence to perform retired member or participant activities before this approval is authorized by the governing body of the employer in a public meeting as reflected in a resolution and received by CalSTRS;

AND BE IT FURTHER RESOLVED that this member or participant will not commence to perform retired member or participant activities before the [TITLE OF CHIEF EXECUTIVE OFFICER OF EMPLOYER] completes the *Request for Separation-from Service Requirement Exemption* form and this is transmitted to and received by CalSTRS.

PASSED AND ADOPTED by the Governing Board of the [NAME OF EMPLOYER], on this [DAY] OF [MONTH] IN THE YEAR [YEAR].

AYES: NOES: ABSENT:

I, [NAME] , Secretary of the Governing Board, [NAME OF EMPLOYER], County of [NAME OF COUNTY], do hereby certify the foregoing to be a full, true and correct copy of a resolution adopted by the said Board at a regular meeting hereof held at its regular meeting place on [DATE] , which action is contained in the minutes of the meeting of said Board.

[NAME OF BOARD SECRETARY]
Secretary of the Governing Board
[NAME OF EMPLOYER]

[DATE]