



# Return to Work and Bona Fide Separation from Service – IRC 401(a)

---

## I. Purpose

A. This policy reaffirms and clarifies the existing practices of the Association with respect to retired Members who return to work after retirement, and such retired Members' bona fide separation from service, applicable for the Association in accordance with Internal Revenue Code section 401(a) and Treasury regulations issued thereunder.

## II. Return to Work and Bona Fide Separation from Service

A. A Member who retired for service and has not attained normal retirement age (as established by the Association) may not return to work for any governmental entity participating in the Association unless he or she has had a bona fide separation from service, to the extent required by Code section 401(a). A bona fide separation from service means that the following conditions are satisfied:

### 1. No Prearranged Agreement to Return to Work

a. Prior to the date the Member's retirement commences, the Member has not entered into any predetermined agreement (either written or unwritten) with a participating employer to return to work after retirement, regardless of the length of the separation from service.

### 2. Minimum Period of Separation from Service

a. Prior to entering into an agreement to return or returning to employment with a participating employer while retired, the Member must have a separation from service of at least the greater of

i. Any required separation from service prior to return to work required by state law or

ii. A continuous 90 calendar day separation from service.

### 3. Exception

a. The Member may be employed by a participating employer prior to the Minimum Period of Separation from Service listed in subsection 2 above for emergency situations, as defined in California Government Code section 8558. However, this exception does not apply to the requirement listed in subsection 1 above that there be no prearranged agreement to return to work.

### 4. Member's Written Acknowledgment

a. The member must acknowledge in writing to SJCERA at the time of retirement that the member has been informed of these requirements and limitations on post-retirement employment and that no

prearrangement to be reemployed while retired exists. The member must also acknowledge that the member has been informed that if the member does not comply with all of the requirements regarding post-retirement employment, the member's retirement benefit may be suspended until such requirements have been met.

**III. Code and Regulations Prevail**

A. This policy is intended to be in accordance with the Internal Revenue Code (Code) and the applicable Treasury regulations. To the extent there is a conflict between this policy and the Code and Treasury regulations, the applicable law will govern.

**IV. Policy Review**

A. Staff shall review this Policy at least once every three years to ensure that it remains relevant, appropriate, and in compliance. Any revisions or amendments to this policy must be approved by the Board of Retirement in accordance with the bylaws.

**V. History**

01/01/2015	Effective Date of Bylaw Section 24
12/08/2017	Extracted from Bylaws into policy
06/29/2018	Staff reviewed, no content changes; updated format
04/12/2019	Policy Review section amended to at least once every three years
07/09/2021	Minor amendments by tax counsel

**Certification of Board Adoption:**

  
Clerk of the Board

07/09/2021

Date