

# Return to Work Rules



## Employer Notice

This *Employer Notice* summarizes the retired member re-employment rules, the effect of recent Governor's executive orders related to those rules, and employers' tracking and reporting responsibilities.

As the prospective employer, it is your and the member's responsibility to ensure compliance with these requirements. Strict penalties may be imposed on a retired member who does not satisfy these requirements.

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## Summary of Statutory Retired Member Return to Work Rules

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### Hiring a Retired Member: SJCERA-participating Employers

As a SJCERA-participating employer, you may hire retired SJCERA members; however, the rules and their ability to continue receiving their pension depend on the type of employment and the number of hours worked. Retired members cannot serve, be employed by, or be employed through a contract directly with a SJCERA-participating employer without reinstatement to active membership except as permitted by Government Code Section 7522.56, summarized in this *Notice*.

#### 1. Temporary or Contract Assignment

You may hire a retired member to work in a temporary or contract capacity, without affecting their retirement benefits if you comply with these requirements:

- Verify the retired member has not received unemployment insurance resulting from the end of employment with a public employer within the last 12 months after the unemployment benefits cease
- Certify the appointment is necessary because of an emergency to prevent stoppage of public business or because they have specialized skills needed to perform work of limited duration
- Start the retired member no sooner than 180 days after their retirement date (see "Exceptions to the 180-day waiting period" below)
- Limit hours worked to no more than 960 hours per fiscal year for any combination of SJCERA-participating employers
- Pay the retired member compensation comparable to the base salary paid to other employees performing comparable duties as listed on the publicly available pay schedule

#### *Exceptions to the 180-day waiting period*

For retired members who did not receive a retirement incentive, the 180-day waiting period may be waived if (1) the employer certifies the nature of the employment and that it is necessary to fill a critically needed position before 180 days have passed and the employer's governing board (such as the Board of Supervisors if the position is with the County) approves the appointment in a public meeting (not on the Consent calendar), OR (2) the member

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is a retired Safety member returning to a position regularly performed by a public safety officer or firefighter. However, all members who retire before reaching the normal retirement age must wait at least 90 days, even if one of these exceptions applies. Read the [Bona Fide Separation](#) section of this notice for more information.

### 2. Full-Time, Permanent Position and Return to Active SJCERA Membership

If you wish to hire a retired member into a full-time, permanent position, the following steps must be completed prior to their start date.

- The retired member must pass a pre-employment physical, arranged by you, the employer, confirming the individual is not incapacitated for the job duties assigned.
- Your HR department must submit a properly completed [Return to Active Membership Application](#) to SJCERA.
- Receive Board of Retirement approval of the *Return to Active Membership* application.

Once the Board of Retirement has approved the *Return to Active Membership* application, employment may begin. The returning retired member will be a Tier 2 member for this new period of membership, and their SJCERA retirement benefit payments will be suspended during their employment. When the member leaves employment, their original retirement benefit (increased by any cost-of-living adjustments), resumes, and the additional benefit (based on their second period of employment) will be paid as a separate benefit.

### Bona-Fide Separation Required: Pre-Arranged Agreement Prohibited and Minimum Waiting Period Required

A bona-fide separation is required regardless of the capacity in which the retired member is returning to work (e.g. part-time, temporary, contract or full-time). The Internal Revenue Code requires members who retire younger than the normal retirement age (generally age 59 for General members and 54 for Safety members) to have a bona-fide separation from service. These retired members cannot have any predetermined agreement or understanding (written or unwritten) with an employer to return to work and they must have a minimum period of separation from service of no less than 90 days. This 90-day waiting period cannot be waived for members who retire younger than the normal retirement age, and it is only allowed if the retired member qualifies for one of the exceptions to the [180-day](#) waiting period described earlier in this *Notice*.

For those members who retire at or after the normal retirement age, a bona-fide separation is not required. However, the 180-day waiting period still applies unless they qualify for one of the exceptions.

### Hiring a Retired Member: Non-SJCERA Employers

After retirement, a retired member may work in any capacity for an employer not covered by SJCERA and there is no effect on their SJCERA retirement benefit.

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## *Effect of Executive Orders*

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Throughout the pandemic, the Governor issued several Executive Orders altering the statutory retired member return to work rules summarized in this *Notice*. However, Executive Order N-4-22 reinstates the normal, statutory rules as of April 1, 2022. Instructions for employers' application of the order are summarized below.

### **Rules for Retired Members Rehired on or after April 1, 2022**

A retired member rehired by a SJCERA-participating employer on or after April 1, 2022, is subject to the statutory rules described in the [Summary of Statutory Retired Member Return to Work Rules](#) of this Notice.

### **Rules for Retired Members Rehired before April 1, 2022**

SJCERA retired members rehired by a SJCERA-participating employer before April 1, 2022, may continue working through June 30 for a participating employer(s), irrespective of the 960-hour limit, subject to the following conditions:

1. Through June 30, 2022, the employer must:
  - a. Complete the [Emergency Return to Work](#) form and submit the form to SJCERA.
  - b. Notify the California Department of Human Resources.
  - c. Report [emergency hours worked](#) to SJCERA separately.
2. On July 1, 2022, the employer must begin counting hours worked towards the 960-hour limitation
3. On July 1, 2022, if the retired member did not complete a 180-day waiting period before returning to work, the retired member will need to either fall under an [exception to the 180-day requirement](#) or stop working by June 30 and wait the additional time needed to fulfill the required 180-day waiting period. If an exception to the 180-day requirement applies, the certification and approval must be completed before July 1.

*Additional Waiting Period Example:* Victoria had been retired for 100 days before returning to work. Her employer must terminate her employment by June 30 and wait an additional 80 days before rehiring her to work another 960 hours.

All other provisions pertaining to rehired retired members still apply.

For more information or resources, e-mail [ContactUs@SJCERA.org](mailto:ContactUs@SJCERA.org) and put Attn: ACEO in the subject line, or call 209.468.2163 and ask to speak with the Assistant CEO.

This fact sheet is intended to provide information as simply and accurately as possible. If a conflict arises between the applicable law or executive order, and any statement in this fact sheet, the law or order will govern.

To request this material in an alternative format, call 209.468.2163, or TTY 711.

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