



## North Carolina Retirement Systems

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

Revised March 2011

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 benefits.***

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

- General information on return-to-work laws if you are a TSERS retiree who wishes to return to work for a TSERS employer
- Returning to work with a private entity
- Returning to work as a contributing TSERS member and therefore stopping your TSERS retirement benefit voluntarily
- Returning to work as a contributing TSERS member, violating any one of the return-to-work laws, and consequently having your TSERS retirement benefit suspended or cancelled involuntarily
- Returning to work for a TSERS employer in a position not eligible for TSERS membership, violating any one of the return-to-work laws, and consequently having your TSERS retirement benefit suspended or cancelled involuntarily
- Returning to work for a TSERS employer in a position not eligible for TSERS membership, following all return-to-work laws, and continuing to receive your monthly TSERS retirement benefit
- Exception for TSERS retirees who wish to return to work as Nursing Instructors
- Returning as an unpaid bona fide volunteer in a local school administrative unit

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.

## **General Information on Return-to-Work Laws if you are a TSERS Retiree who Wishes to Return to Work for a TSERS Employer**

***If you retired under the TSERS on or after November 1, 2005, you must be retired at least six months before performing any services for a TSERS employer in any capacity (except as an unpaid bona fide volunteer in a local school administrative unit as described on page 4).***

If you perform any services for a TSERS employer (except as an unpaid bona fide volunteer in a local school administrative unit) before the end of the mandatory six-month waiting period, your TSERS retirement benefit must be cancelled and all TSERS retirement benefits paid to you must be repaid to the Retirement System. Establishing a pre-existing agreement for post-retirement employment with a TSERS employer is prohibited and will cause retroactive revocation of retirement benefits, as well. Please note that your State-provided health insurance also must be cancelled if your retirement benefit is cancelled.

If you return to work with a TSERS employer in a position that does not require membership in the 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
- \$29,280.00 (for 2011).

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.

### **I. 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 the TSERS (i.e. federal government, local government, or another state government that does not participate in this Retirement System), your TSERS retirement benefit will continue uninterrupted until your death. 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 work with an agency participating in the TSERS.

However, if you return to work for a private entity, such as a temporary agency or a Limited Liability Corporation (LLC), which then assigns 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 III and IV below.

### **II. Returning to Work as a Contributing TSERS Member and Therefore Stopping Your TSERS Retirement Benefit Voluntarily**

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 nine 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 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.

### **III. Returning to Work as a Contributing TSERS Member, Violating any One of the Return-to-Work Laws, and Consequently Having your TSERS Benefit Suspended or Cancelled Involuntarily**

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, 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 nine 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.

### **IV. Returning to Work for a TSERS Employer in a Position Not Eligible for TSERS Membership, Violating any One of the Return-to-Work Laws, and Consequently Having Your TSERS Retirement Benefit Suspended or Cancelled Involuntarily**

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, and all TSERS retirement benefits paid 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. Again, it is important to note that your State-provided health insurance will be cancelled during the period of time your TSERS retirement benefit is suspended.

### **V. Returning to Work for a TSERS Employer in a Position Not Eligible for TSERS Membership, Following all Return-to-Work Laws, and Continuing to Receive your Monthly TSERS Benefit**

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 services on any basis that does not require membership in the TSERS. 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 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. As long as you are reemployed with a TSERS employer in a position that does not require membership in the 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.”

### **Exception for TSERS Retirees Who Wish to Return to Work as Nursing Instructors**

If you are a TSERS retiree who retired on or before June 1, 2009 with a reduced or unreduced benefit, or if you retire on or after July 1, 2009 with an unreduced benefit, and you wish to return to work as a nursing instructor exempt from the earnings limitations and continue to receive your monthly TSERS benefit, you may do so provided you meet **all** of the following conditions:

- you have a six-month separation from service under the TSERS immediately preceding your return to employment as a nursing instructor, during which time no work is performed in any capacity with a State-supported community college or university;
- you return to work as a nursing instructor for a maximum of three years in a permanent full-time position, or a part-time position that exceeds fifty percent of the workweek, in a certified nursing program at a State-supported community college or university;
- you have been certified by your North Carolina Community College System or University of North Carolina System employer to teach as a nursing instructor; and
- your employer has certified to the TSERS that it has a shortage of qualified nursing instructors and has met all required conditions of making a good faith effort to hire non-retirees as nursing instructors.

Unless legislation extends this reemployment exception for nursing instructors, these provisions are in effect through June 30, 2013.

### **Returning as an Unpaid Bona Fide Volunteer in a Local School Administrative Unit**

Effective March 26, 2009, as a TSERS retiree, you may return to service as an unpaid bona fide volunteer in a local school administrative unit during the first six months after your effective retirement date without affecting your TSERS retirement benefits. This volunteer service cannot be paid, cannot be holding a paid position open or helping you secure paid work in the future, and must be work that would typically be done by a volunteer.

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 six 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. 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 who retired on or after November 1, 2005, 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:**

- If you retired on or after November 1, 2005, you must be retired at least six months before returning to work for a TSERS employer in any capacity (except as a bona fide volunteer in a local school administrative unit).
- You must work in a position that does not require membership in the 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 nine 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
  - \$29,280.00 (for 2011).

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

### **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 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-provided health insurance will be cancelled during the period of time your TSERS retirement benefit is suspended.
- 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 1-877-733-4191 (toll-free), or (919) 733-4191 (Raleigh area only).

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 if you are receiving a disability benefit from any System, different laws apply; you should contact the Retirement Systems Division for additional information.