

CITY OF AUSTIN EMPLOYEES' RETIREMENT SYSTEM

RETURNING TO WORK AFTER RETIREMENT QUESTIONS & ANSWERS

The Board of Trustees for the City of Austin Employees' Retirement System (COA ERS) recently adopted a new policy statement regarding retirees working for the City of Austin. This policy is to be used in conjunction with the statutory provision regarding retirees returning to work. A copy of the actual policy document is available upon request or may be accessed on the COA ERS website (www.coaers.org).

In order to help all members, whether active or retired, understand the law and policy, the following questions and answers are provided:

Why has the policy been adopted?

This policy has been adopted (1) to ensure compliance with the existing state law restrictions on retirees working for the City; and (2) to ensure full compliance with federal regulatory requirements.

What does Texas law say about retirees working for the City and what does it mean?

The Statute governing COA ERS states the following:

“A retired member who resumes regular full-time employment with an employer automatically resumes membership as an active contributory member, and the retirement board shall terminate the person's retirement allowance. **The retirement allowance of a retired member shall be suspended if the member is employed by an employer for at least six months in any consecutive 12 consecutive calendar months and works, is budgeted, or is compensated for more than 29 hours in a calendar week.** When the person again retires, the retirement system shall compute the benefit based on service before and after the initial retirement. The resulting benefit is reduced actuarially to reflect the value of the benefits received before the resumption of full-time employment.”

This means that a retiree may work an unlimited length of time, provided the hours worked, budgeted or compensated for do not exceed 29 hours per week. If, however, a retiree works more than 26 weeks in any consecutive 52 week period, they may not work or be budgeted or compensated for more than 29 hours in any week during that period. To do so will cause suspension of the retirement benefit. It is especially important than any retiree working for the City be aware of this provision to avoid any potential for suspension of benefits. Retirees that have already exceeded the 29 hour threshold, must be especially vigilant because once they exceed six months of employment (even if the hours worked per week may be variable), they will be in non-compliance and subject to suspension. These rules can be confusing, so please contact the Retirement Office to discuss your specific situation.

Can an employee enter into an agreement to return to work after retirement?

No. Prior to retirement, an employee cannot enter into an oral or written agreement to return to work. The only exception is noted below.

How long does a person need to be retired before returning to work?

A retiree needs to wait 45 days before returning to work, except as provided below.

If a person retires at “normal retirement age”, can they have an agreement to return to work? Can the person return to work before 45 days have passed?

Yes. A person who retires at normal retirement age can enter into an agreement to return to work. The person can return to work before 45 days have passed.

What is “normal retirement age”?

“Normal retirement age” is defined by Texas statute as age 62; or 55 years of age with 20 years of creditable service.

What is creditable service?

Creditable service is a combination of membership service, prior service, reinstated service, and purchased service. Creditable service does not include “proportionate service credit”. If you have questions concerning the types of creditable service, please contact the Retirement Office.

Are these requirements (regarding break in service and agreements) new?

Yes and no. The Statute governing COA ERS defines “retirement” as the *termination of employment* of a member after the member becomes entitled to receive a retirement allowance. Federal tax rules also generally prohibit distributions of tax-qualified retirement moneys to employees who are still in service and have not reached “normal retirement age”. It is important to maintain COA ERS' tax-qualified status in order to protect the tax-deferred status of employee accounts.

Tax counsel to COA ERS has advised that members who have not reached “normal retirement age” (age 62 or age 55 with 20 years of creditable service) must have a bona fide separation of service and should not have a pre-arrangement to return to work as an employee. A pre-arrangement to return to work would cast doubt on whether or not an actual termination of employment has occurred. Therefore, COA ERS amended the policy to provide clarity as to what will be considered a termination of service and to whom it will apply.

How will this policy affect me?

This rule is important if you are nearing retirement and are considering returning to employment with the City of Austin after you retire. A person who has not reached “normal retirement age” will be required to affirmatively state that they have no pre-arrangement to return to employment and are ineligible to return to work for 45 days after retirement. Failure to observe the required break will result in your reenrollment as an active COA ERS participant and invalidation of your retirement. If you have been paid any benefits, your benefits will be immediately terminated and you will be subject to recovery of any benefits already paid.

What does this mean for retirees currently working for the City of Austin?

Retirees that have worked more than 26 weeks in any 52 week period or intend to do so in the future, must be vigilant in making sure that their working hours do not exceed 29 hours per week. In addition, they must make sure that they are not *budgeted* or *compensated* for more than 29 hours per week. For example, paid vacation in excess of 29 hours in a work week is *compensated* time, though not actually worked.

Before an actual suspension of benefits will occur, a retiree will be notified of the apparent violation and provided an opportunity to respond in writing to any reporting error. Assuming there are no errors in reporting, the suspension will proceed. Retirement benefits during a period of suspension are permanently forfeited. Continued employment means retirement contributions will be due from both the City and the employee.

Once employment ceases, the employee may retire again and his or her benefits will be recalculated, taking into consideration additional service credit and the value of benefits already paid. Under current policy, the recalculated benefit cannot be less than the prior benefit. The original benefit option and survivor beneficiary selected cannot be changed.

What does this mean for members who are approaching retirement and may be considering returning to work for the City after retirement?

This means that employees who are retiring under the “23 and out” provision and who are not 55 or older must have a break in service of 45 days and cannot have a pre-arrangement to return to employment. Those retiring at age 62 or older have no such restrictions. Those retiring at age 55 through 61, with 20 or more years of creditable service also have no such restrictions. Be advised that creditable service *does not* include “proportionate service credit” from another retirement system. It does, however, include any purchased service credit.

What if I return to work as an independent contractor?

These restrictions do not apply if the retiree is (or will be) working for the City of Austin as an independent contractor as defined by Internal Revenue Code.

More questions? Contact the Retirement Office at 458-2551.



City of Austin Employees' Retirement System

**City of Austin Employees' Retirement System
Board Approved Policy**

Policy: R- 1

Subject: Retirees Working for the City of Austin

Review Committee: Goals and Objectives

Date Implemented: October 26, 1999

Date Revised and/or Reviewed: November 30, 2004
October 26, 2004
September 10, 2002
March 28, 2000
February 27, 2001

Printed Name of Chairperson: Cathy Rodgers

Signature of Chairperson: _____

City of Austin Employees' Retirement System
Rules for COA ERS Retirees Returning to Work for the City of Austin

I. PURPOSE AND SCOPE

The City of Austin Employees' Retirement System (COA ERS) Board of Trustees has adopted this Policy regarding Retirees who return to work for the City of Austin after retirement to enforce Article 6243n. (governing statute) restrictions on the number of hours and duration of any employment in excess of twenty-nine (29) hours per week and ensure regulatory compliance.

II. RESPONSIBILITIES

- A. **Executive Director:** Shall review reports on Retiree work schedules and notify Retirees by mail of any potential noncompliance with the governing statute. Upon final determination, shall suspend the annuity of any Retiree found to be in noncompliance. Upon suspension, the employee will be considered to again be an active member of the retirement system with contributions due from both the employee and employer.
- B. **Retirees Working for the City of Austin:** Shall notify the Retirement Office if their work schedule exceeds limits and requires suspension of annuity payments.

III. RESTRICTIONS

- A. Except as provided below, Retirees may work for the City of Austin in any capacity, for any length of time, as long as they do not work, and are not budgeted or compensated for more than twenty-nine (29) hours per week.
- B. If any Retiree works, is budgeted or compensated for more than twenty-nine (29) hours in any calendar week, the Retiree is restricted to working no more than twenty-six (26) weeks in any twelve (12) consecutive calendar month period.
- C. A member who has not reached "normal retirement age" may not work for the City of Austin within 45 days of his or her retirement date and may not have an agreement (oral or written) prior to retirement to return to work for the City of Austin after retirement. If employment with the City of Austin occurs within 45 days of retirement, the retirement will be invalidated.
- D. "Normal retirement age" is defined by Texas Statute as "age 62; or 55 years with 20 years of creditable service". Creditable service does not include proportionate service credit.
- E. These restrictions will apply to Retirees working for any employer covered by the City of Austin Employees' Retirement System.
- F. These restrictions do not apply if the Retiree is working for the City of Austin as an independent contractor as defined by Internal Revenue Code.

IV. COMPLIANCE

- A. The burden of compliance shall rest with the Retiree.
- B. The City of Austin Employees' Retirement System will provide information as to the restrictions on Retirees working for the City of Austin to all Retirees as part of the retirement process; however, it is ultimately the responsibility of the Retiree to know the plan provisions relating to returning to work. Absence of notice will not be considered a valid defense.
- C. Employees making application for retirement who have not reached "normal retirement age" will be required to affirmatively state that they will terminate employment no later than their selected retirement date and that they have not entered into an agreement (oral or written) to return to work for the City of Austin after retirement.