

Life Changes

What If I Work after Retirement?



Office of the New York State Comptroller
Thomas P. DiNapoli



NYSLRS

New York State and Local Retirement System

A Message from Comptroller Thomas P. DiNapoli

Depending on your personal or financial circumstances, you may be considering working after retirement.



NYSLRS retirees can work after retirement and still receive a pension. However, you should be aware of the laws governing post-retirement employment and how working after retirement may impact your retirement benefits.

Before you decide to return to work, please read this booklet carefully. It will help you understand who you can work for and how much you can earn before your retirement benefits may be affected. If you still have questions or concerns, please contact us. As always, my staff and I are here to help.

Sincerely,

A handwritten signature in black ink that reads "Tom DiNapoli". The signature is written in a cursive, flowing style.

Thomas P. DiNapoli
State Comptroller

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Thinking of Returning to Work?

Your earnings may be limited if you return to work after retiring from either the New York State and Local Employees' Retirement System (ERS) or the New York State and Local Police and Fire Retirement System (PFRS).

New York State Retirement and Social Security Law (RSSL) regulates post-retirement employment for all members of the New York State and Local Retirement System (NYSLRS). The rules and restrictions differ depending on:

- The type of retirement benefit you are receiving (service or disability);
- The employer you will be working for (private, public, yourself, etc.);
- Your date of membership and tier; and
- Your age.

Failure to follow these rules can result in the loss, suspension or reduction of your retirement benefit. **Please read this booklet carefully and contact us before returning to work if you have questions.**

Note: None of the limitations in this booklet apply to beneficiaries of retirees.

Service Retirees

Returning to Work (No Restrictions)

As a service retiree (retired under a regular service retirement, not a disability retirement), you can receive your retirement benefit and return to work if your new employer is **not** a public employer in New York State. So, you do not need prior approval, and your earnings are unlimited, **if** you:

- Work for a private employer;
- Work for a state other than New York State, or its political subdivisions; or
- Work for the federal government.

Earnings for work as a juror, an inspector of elections, a poll or ballot clerk, a notary public or a commissioner of deeds are also unlimited.

Returning to Work (Restrictions)

If you perform paid services for a public employer in New York State after you retire, there are restrictions on receiving your pension while you work. These restrictions, along with your options and responsibilities, are explained in the next few pages.

“A public employer in New York State” means:

- The State of New York;
- One of its political subdivisions (e.g., county, city, town, village);
- A school district or Boards of Cooperative Educational Services (BOCES);
- A public university or college;
- A public authority or public benefit corporation; or
- Another entity that participates in any of the public retirement systems (including optional retirement plans such as TIAA) within the city or state of New York.

This is not a complete list. If you have questions about whether your new employer is a public employer, you should contact us.

Returning to Public Employment in New York State

Two sections of the RSSL — Section 211 and Section 212 — may affect your return to public employment. If you return to public employment, you may still be able to collect your pension, depending upon:

- How much you earn after you return to public employment; and
- Your age.

If you are under age 65, you can return to public employment without approval or reduction in your retirement benefit as long as your calendar year earnings are less than the Section 212 limit (the limit is \$35,000 beginning in calendar year 2020).^{*} The limit includes all earnings for the calendar year, including money or retroactive payments earned in the calendar year but paid in a different calendar year.

If your earnings will be more than the Section 212 limit, the RSSL permits your employer to seek approval to hire you under Section 211. However, there are specific procedures that must be followed and strict standards that must be met.

There is generally no restriction on your earnings beginning in the calendar year you turn 65, unless you return to public office. For information about holding an elected position after retirement, please read *Holding Elected Positions After Retirement* (page 12).

^{*}The earnings limit was increased as a result of new legislation signed into law in December 2019. Prior to the new law, the limit was \$30,000.

Understanding Section 212

How It Affects Your Benefits

You may return to public employment, earn up to the annual amount set by RSSL Section 212, and continue to receive your retirement benefit.

Your earnings are generally unlimited beginning in the calendar year you turn 65. If you are under the age of 65 and you earn *more* than the Section 212 limit during a calendar year, you must either:

- Pay back NYSLRS for the pension payments you received after the date you reached the limit. If you continue to work, your pension payments will stop (be suspended) for the rest of that calendar year and resume the following January.

OR

- Rejoin NYSLRS, in which case your pension payments will stop until you retire again at some future date. (You'll need to reapply.)

Note: If you are a retired New York State or municipal police officer employed by a school district as a school resource officer, the Section 212 earnings limitation may not apply to you if your employer receives prior approval from the Commissioner of Education. If you earn more than the Section 212 limit in a calendar year, you are under the age of 65, but you did not receive an exemption from the Commissioner of Education, your benefit will be suspended for the rest of that calendar year.

Service Credit

You will not receive credit toward your pension for service under Section 212 if you do not rejoin NYSLRS.

Understanding Section 211

How It Affects Your Benefits

If you return to work for a public employer and will earn more than the annual Section 212 limit (currently \$35,000), you may be able to work under Section 211 without affecting your pension. However, your employer must receive approval (known as a Section 211 waiver) before hiring you. You must wait one year after retiring before returning to work in the same or similar position under a Section 211 waiver.

If you earn more than the Section 212 limit in a calendar year and do not have a Section 211 waiver, your benefit will be suspended for the rest of that calendar year.

Obtaining Section 211 Approval

To receive a waiver, your prospective employer must request and receive approval to hire you from the appropriate agency. Usually, that agency is the New York State Civil Service Commission. However, depending on your job, one of the entities listed below may also grant this approval:

- The New York State Commissioner of Education;
- The Campus President of each State University of New York;
- The Chancellor of the New York City Department of Education;
- The New York City Division of Citywide Personnel Services; or
- The New York State Office of Court Administration.

A waiver covers a fixed period of time, up to two years. If you want to continue working beyond the approved period without affecting your pension, your employer must request and receive approval again.

Approval of your prospective employer's request is not automatic; it depends on the employer's needs and your qualifications. The law also requires New York State public employers to make reasonable efforts to find qualified, non-retired workers to fill vacancies first, and to show why Section 211 waivers are absolutely needed to hire people who are already retired.

If approval is granted, your earnings would be unlimited, unless you return to a former employer. Earnings from work for a former employer are subject to a set limit. If you earn over that limit in a year, your benefit will be reduced or suspended for the rest of the calendar year. Please contact us to find out what the limit is before taking the position.

A "former employer" is any public employer that paid you a salary or compensation at any time during the two years before your retirement, provided your retirement benefit is based in part on that salary and/or service.

Note: New York State is considered a single employer. Therefore, if you retired from one State agency and are considering working for a different State agency, it is considered the same employer under RSSL Section 211.

Service Credit

You will not receive credit towards your pension for service under Section 211 if you do not rejoin NYSLRS.

Reporting Your Earnings

It is your responsibility to notify us if you earn more than the earnings limit. If you know you are going to earn more than the limit, contact us at least a month before you go over the limit. You can email us using the secure email form on our website at www.emailNYSLRS.com, or you can fax a letter to 518-402-2498. Be sure to include the name of your employer, the approximate date that you expect to earn more than the limit and your daytime phone number in case we have questions.

Note: School districts and BOCES must annually report all public retirees who were on their payroll in the previous calendar year to NYSLRS. That includes independent contractors and consultants. In addition, they must notify us when a NYSLRS retiree earns more than the Section 212 limit (currently \$35,000).

Rules and Laws That Apply to Returning to Work for the Same Employer¹

In order to retire, a member must have a bona fide termination and be removed from payroll before the effective date of retirement. This is required by Internal Revenue Service (IRS) rules and the Retirement and Social Security Law (RSSL). When you apply to retire, we will notify your employer that your last day on their payroll must be no later than the day before your date of retirement.

Whether a termination has occurred is based on whether facts indicate that the employer and employee reasonably anticipated that no further services would be performed after the retirement date. Where it is expected that the employee will return to employment after the date of retirement, or where a member is retained on the payroll and paid for services past the date of retirement, there is no termination and the service retirement will be voided. Any pension amounts paid in error due to the fact that a retirement was invalid will be recovered by the Retirement System.

Under RSSL Sections 211 and 212, employers may employ retirees with certain limitations. Notwithstanding these sections, however, a pre-arranged agreement to rehire the employee risks the separation not constituting a bona fide termination. Any questions related to this should be directed to NYSLRS.

¹Updated 9/21

Holding Elected Positions After Retirement

If you are elected or appointed to an elected position that you did not hold before you retired, your earnings are unlimited and will not affect your pension. For example: You retired from your full-time job driving a school bus a year ago, and you have been collecting your pension. You are elected to your city council. Your council member salary is not limited and will not affect your pension.

If you continue to work in the *same* elected office to which you were elected or appointed before retiring, the Section 212 earnings limit will apply to your earnings.

If your date of membership is on or after July 26, 1995, the limit will apply as long as you continue to work, regardless of your age. If your date of membership is before July 26, 1995, the limit will apply only until you turn 65.

Replacing an Employee on Military Leave

If you are hired by a local government to temporarily replace an employee called to active military duty and the position is essential to the public's health and safety, your earnings are not limited by Section 211 or Section 212. However, your prospective employer must first certify to the New York State Civil Service Commission or the New York State Commissioner of Education that:

- You are qualified and physically fit for the position;
- There is a need for your services; and
- Your employment is in the best interest of the local government.

Working as an Independent Contractor or Consultant

If you joined NYSLRS on or after May 31, 1973:

If you joined NYSLRS on or after May 31, 1973, your earnings with a public employer are regulated by Section 211 or Section 212, even if you are working as an independent contractor or consultant.

If you joined NYSLRS before May 31, 1973:

There is generally no limit to the amount you may earn from a public employer as an independent contractor or consultant. However, we will review your personal service contracts to help you avoid any reduction or suspension of your retirement benefit.

If your contract is with New York State, the personnel office of the agency involved will process the contract. The agency must submit the contract to the New York State Department of Law and the New York State Office of the State Comptroller. If the contract is approved, the Bureau of State Expenditures will assign it a number. You must advise us, in writing, of the contract number and the beginning and ending dates.

A contract with a public agency other than New York State must be submitted to our legal staff by you or your employer. Our legal staff will review the contract to determine if the terms and conditions will allow you to continue receiving your retirement benefit without suspension or reduction for the contract's duration. The review will take approximately four weeks and a written determination will be sent to you.

If the contract is not approved by the Office of the State Comptroller or the New York State Department of Law, your employment will be regulated by Section 211 or Section 212.

Service Credit

You will not receive credit toward your pension for service performed as an independent contractor or consultant if you rejoin NYSLRS at a later date.

Returning to Membership

If after retiring from public employment in New York State, you later decide to go back to work in the public sector, be aware that you also have the option of rejoining NYSLRS. In the event you are considering such a course of action, you'll need to be aware of the consequences of your decision.

Rejoining NYSLRS may increase your total service credit, allowing you to reach certain milestones that would increase your pension. An increase in earnings could also result in a higher pension.

However, depending how long you work after rejoining, your new pension may not be higher than your original amount. In addition, when you retire again, your new retirement date can delay cost-of-living adjustments (COLAs). Lastly, if you previously retired under an early retirement incentive plan enacted by the Legislature and your pension is recalculated, you would lose any incentive service included in the calculation of your original benefit.

Employment Covered by the Same Retirement System

The following information is a brief summary and applies only to ERS or PFRS service retirees who are rejoining the same System. Different information applies to retirees of other retirement systems, those joining a different System than the one they retired from, and disability retirees.

How Your Benefits Are Affected

Tier 3, 4, 5 and 6 retirees may rejoin immediately and return to their former tiers.

Tier 5 and 6 members: In most cases, you will contribute a percentage of your earnings, depending on your retirement plan.

Tier 3 and 4 members: You do not have to contribute if you were previously credited with at least ten years of service or were a member for ten or more years. You are still covered by any post-retirement death benefit and option under which you retired until you become eligible for a death benefit in your new membership.

Tier 1 and 2 retirees: You must have one year of service credit after returning to work before you become eligible for an active member death benefit. You may choose to:

- Defer NYSLRS membership for one year. If you die during that year, your beneficiary will receive a benefit if you elected a pension payment option that calls for payment to a beneficiary. At the end of the year, you will be enrolled in NYSLRS and you will receive service credit for the year of deferment. You will then be covered by the active member death benefit.

OR

- Join NYSLRS on the day your new employment begins. However, be aware you will not be eligible for an active member death benefit until you have accrued one year of service credit.

When You Retire Again...

When you retire again, a new retirement date will be established.

... with less than two years of service credit

If you are a Tier 2, 3, 4, 5 or 6 member and you earn less than two years of service credit in your new membership, your original pension will be reinstated along with your option election and date of retirement. You will *not* receive an additional benefit for service credit earned after rejoining NYSLRS.

If you are a Tier 1 member and you earn less than two years of service credit in your new membership, your original pension will be reinstated and you *will* receive an additional benefit based on service credit earned after rejoining NYSLRS.

... with two or more years of service credit

For all tiers, once you earn at least two years of service credit in your new membership, you will have the option to receive a recalculated pension that takes into account your original service credit, the additional service credit you earned and any increase in salary. You may also select a new option for benefit payments, if you wish.

In order to receive a recalculated benefit that includes your additional service, you will have to repay, at the Single Life Allowance (Option 0) rate, the entire amount of the pension that you received when you first retired, plus interest. You may repay the amount before you retire again — in a lump sum or by installments — or you may request a permanent actuarial reduction to your new pension to account for the benefits you already received.

Members who do not wish to repay previous benefits will have their original pension reinstated and will receive an additional benefit based on just the service earned after the return to membership.

Before You Rejoin...

If you are seriously considering rejoining NYSLRS, we strongly urge you to contact us (www.contactNYSLRS.com) to discuss the consequences more fully and obtain additional information.

Rejoining NYSLRS after returning to work may prove financially prohibitive, so you should also consider consulting a financial advisor before making any decision.

Employment Covered by a Different Retirement System

If you return to employment covered by a New York State public retirement system other than the system you retired from, **you may only join the new system if you stop receiving (suspend) your NYSLRS pension.** Your tier in the new system will be determined based on your date of membership in the system from which you retired.

The eight public retirement systems in New York State are:

- New York State Employees' Retirement System;
- New York State Police and Fire Retirement System;
- New York State Teachers' Retirement System;
- New York City Teachers' Retirement System;
- New York City Employees' Retirement System;
- New York City Fire Department Pension Fund;
- New York City Police Pension Fund; and
- New York City Board of Education Retirement System.

Members who retire from PFRS then become employed as police officers with the Metropolitan Transportation Authority also have the option of transferring their PFRS membership to the Metropolitan Transportation Authority Police Pension Fund.

If you have any questions, please contact the new system for more information before joining.

Disability Retirees

Returning to Work

Almost all disability retiree earnings, both public and private, are limited under the RSSL, Section 102 for ERS and Section 402 for PFRS. If you retired under a disability retirement benefit, please contact us (www.contactNYSLRS.com) to find out your limit and ask any questions you have about working after retirement.

How Your Benefits Are Affected

Whether you work for a public or private employer (see page 4), your earnings may be limited. The limit is specific to each retiree.

In any year, it is the difference between:

- The maximum salary you would have received in the next higher position from which you retired; and
- The amount of your annual Single Life Allowance.

Example: If you were a Clerk 1 when you retired, the next position above would be Clerk 2. The limit would be the Clerk 2 salary minus the amount of your annual Single Life Allowance.

At your request, we will determine your earnings limit. We will contact your former employer for salary information, and, once we receive it, we will notify you of your limit.

If you return to work for an employer that participates in the same retirement system from which you retired and your salary is more than the maximum salary described above, you will be required to stop receiving your pension and rejoin the retirement system, and you will no longer be retired under a NYSLRS disability retirement benefit.

Once You Reach Retirement Age

When you reach the age you would have been eligible to apply for service retirement or would have had the required years of service to be eligible for service retirement (regardless of age) in a special plan:

- Your earnings are no longer limited in private employment.
- Your earnings are no longer limited in public employment covered by a retirement system *other than* the one from which you retired.
- Your earnings in public employment covered by the *same* retirement system from which you retired are limited to the maximum salary of the next higher position from which you retired. If you earn more than the limit, we will stop your pension for the remainder of the calendar year, and recover the amount you received during the calendar year that was over your limit.

Reporting Your Earnings

It is your responsibility to notify us if you earn more than the earnings limit. If you know you are going to earn more than the limit, contact us at least a month before you go over the limit. You can email us using the secure email form on our website at www.emailNYSLRS.com, or you can fax a letter to 518-402-2498. Be sure to include the name of your employer, the approximate date that you expect to earn more than the limit and your daytime phone number in case we have questions.

Note: School districts and BOCES must annually report all public retirees who were on their payroll in the previous calendar year to NYSLRS. That includes independent contractors and consultants.

Receiving Service Credit

If you rejoin NYSLRS, your original membership will be reinstated. You will receive all previously credited service, and your previous service will be considered in the calculation of any subsequent retirement benefit (if you earn at least two years of service credit after rejoining). If you have questions about rejoining NYSLRS, you should contact us (www.contactNYSLRS.com).

If you do not rejoin NYSLRS, you will not receive additional service credit toward your pension and your post-retirement earnings will not increase your pension.

Stay Informed

Your retirement benefits are an important part of a solid financial plan. They can help you and your beneficiaries achieve financial security in retirement or in the event of disability or death. Use these tips to better understand your benefits and stay informed.

- Register for *Retirement Online*, a convenient and secure way to review your benefits and conduct transactions in real time. In many cases, you'll be able to use *Retirement Online* instead of mailing forms or calling NYSLRS. Retirees can view benefit information, update contact information, view and update beneficiaries and generate an income verification letter. Learn more at www.osc.state.ny.us/retire/retirement_online/customers.php.
- Review your Member Annual Statement or Retiree Annual Statement carefully and notify us of any errors promptly.
- Visit our website (www.osc.state.ny.us/retire/index.php) frequently to learn about your benefits, download forms, read informative booklets and brochures, and get tips on preparing for retirement.
- If you have not yet retired, attend a pre-retirement presentation to learn about the retirement process and discuss post-retirement issues. At your employer's request, we offer these presentations designed for members within five years of retirement eligibility.

- Make an appointment to visit any of our consultation sites (www.osc.state.ny.us/retire/consultation_site_offices/index.php), where you can meet with an information representative to discuss special concerns or request specific information.
- Notify us if your mailing address changes. This is especially important if you leave public employment before you are eligible to retire.
- Contact us (www.contactNYSLRS.com) if you have questions about your benefits.
- Subscribe to our blog, *New York Retirement News* (www.nyretirementnews.com), where you'll find tools to help you understand your benefits, as well as important retirement news.
- Like us on Facebook (www.facebook.com/nyslrs) and follow us on Twitter (www.twitter.com/nyslrs) for quick tips and updates on a variety of retirement topics.
- Sign up for *E-News*, our email newsletter (www.osc.state.ny.us/retire/e-news/sign-up/index.php), for the latest NYSLRS news and information dedicated to pre-retirement planning.
- Read your member or retiree newsletter for current retirement information and updates on your benefits.

Contact Us

If you have any questions or you need more information, we're glad to help.

- **Email:** www.emailNYSLRS.com;
- **Call:** 1-866-805-0990, or 518-474-7736 in the Albany, New York area; or
- **Write:**
NYSLRS
110 State Street
Albany, NY 12244-0001.

Finally, for information about post-retirement issues and services available after retirement, request a copy of our booklet, *Life Changes: A Guide for Retirees* (VO1705).

This publication provides a general summary of retiree benefits, rights and responsibilities, and is not a substitute for any New York State or federal law. For specific information about your benefits, please contact us.

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