

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

What does retirement mean to you? Perhaps it means spending more time with your family, taking vacations or enjoying new hobbies and interests.



But if you are considering returning to work after retirement, you should be aware of the laws governing post-retirement employment. Failure to understand these laws may result in a reduction or suspension of your retirement benefit.

Before you decide to return to work, please read this booklet carefully. 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

Table of Contents

Thinking of Returning to Work?	3
Service Retirees	4
Returning to Work	4
Returning to Public Employment in New York State	6
Replacing an Employee on Military Leave	7
Reporting Your Earnings	7
Understanding Section 212	8
Understanding Section 211	9
Holding Elected Positions After Retirement	11
Working as an Independent Contractor or Consultant	12
Returning to Membership	14
Employment Covered by a Different Retirement System	18
Disability Retirees	19
Returning to Work	19
How Your Benefits Are Affected	19
Reporting Your Earnings	21
Receiving Service Credit	21
Stay Informed	22
Contact Us	24

Thinking of Returning to Work?

Your earnings may be regulated 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).

The 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.

Not following these rules can result in the loss, suspension or reduction of your retirement benefit. **Please read this booklet carefully and contact us before you return to employment.**

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

Service Retirees

Returning to Work

As a service retiree, you can receive your retirement benefit while you work if your employer is *not* a public employer in the State of New York. Therefore, you do not need our approval and your earnings are unlimited *if* you:

- Are self-employed;
- Work for a private employer;
- Work for another state or its political subdivisions; or
- Work for the federal government.

Also, earnings for working as a juror, an inspector of elections, a poll or ballot clerk, a notary public, or a commissioner of deeds are not limited.

If your post-retirement employer is a public employer in New York State, 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.

**“Public employment in New York State”
means working for:**

- 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 authority or public benefit corporation; or
- Another entity that participates in any of the public retirement systems within the city or state of New York, including the Optional Retirement Plans (ORP) such as TIAA.

This is not a complete list. If you have any doubt about the status of your new employer, you should contact us.

Note: State service retirees should also be aware of the State’s ethics laws governing post-retirement employment found in Public Officers Law Section 73(8). (Local government service retirees should note that these provisions *apply only to State service retirees.*)

The State’s post-retirement employment restrictions include a two-year bar and a lifetime bar. There is, however, a government-to-government exception. For more information, visit the New York State Joint Commission on Public Ethics website at www.jcope.ny.gov.

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 has been set at \$30,000 since January 1, 2007).

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 11).

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 interests of the local government.

Reporting Your Earnings

As part of your Retiree Annual Statement, you will receive a Report of Post-Retirement Employment form. If you have had public employment earnings after retirement, please complete the form and return it to us. If your reported earnings exceed the limit, we will reduce or suspend your pension to recover any overpayment.

Note: Section 217 of the RSSL requires school districts and BOCES to report annually to the Retirement System all public retirees (including independent contractors and consultants) on their payroll during the previous calendar year. In addition, they must notify us when a NYSLRS retiree earns more than the Section 212 limit, currently \$30,000.

Understanding Section 212

How Your Benefits Are Affected

Under RSSL Section 212, you may return to public employment, earn up to the annual amount set by law, and continue to receive your retirement benefit. We publish the yearly earnings limit in our *Retiree Notes* newsletter and in your Retiree Annual Statement.

Your earnings are generally not limited by Section 212 beginning the calendar year you turn 65. However, if you are under the age of 65 and earn more than the Section 212 limit during a calendar year, you may:

- Pay back to the Retirement System an amount equal to the retirement benefit you received after you reached the mandated limit. If you continue to work, your retirement benefit will be suspended.

OR

- Rejoin the Retirement System, in which case your retirement benefit will stop.

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 provided your employer receives prior approval from the Commissioner of Education. If you earn more than the Section 212 limit but did not receive an exemption from the Commissioner of Education, your benefit will be reduced or suspended.

Service Credit

You will not receive Retirement System credit for service under Section 212 if you rejoin at a later date.

Understanding Section 211

How Your Benefits Are Affected

If you are returning to work for a public employer and will earn more than the annual Section 212 limit, you may be able to work under Section 211 without affecting your pension. However, your employer must receive prior approval (known as a Section 211 waiver). Effective October 7, 2008, unless you've already received approval, you cannot return to work under Section 211 in the same or a similar position for a period of one year following retirement.

If you earn more than the Section 212 limit and do not get Section 211 approval, your benefit will be reduced or suspended.

Obtaining Section 211 Approval

Your prospective employer must request and receive approval of employment from the appropriate agency for you to receive an unreduced pension while still working. Usually, that agency is the New York State Civil Service Commission. However, depending on your job, one of the entities listed below may be authorized to grant this approval. These include:

- 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.

Approval is given for a fixed period of time, up to two years. If you want to continue working beyond the approved period without affecting your eligibility for a full retirement benefit, your employer must submit a new request to the appropriate approving agency.

Approval of your prospective employer's request is not automatic, but is based 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, your benefit will be reduced or suspended. 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: The State of New York is considered one 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 Retirement System credit for service under Section 211 if you rejoin the System at a later date.

Holding Elected Positions After Retirement

If you are elected or appointed to an elective 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, are collecting your pension, and this year you were elected to your city council. Your council member salary is not limited and will not affect your pension.

However, if you continue to work in the same elected office you held before retiring, and your date of membership is on or after July 26, 1995, Section 212 limits will apply to your earnings, regardless of age. If your date of membership is before July 26, 1995, Section 212 limits will apply to your earnings only until you turn 65.

Working as an Independent Contractor or Consultant

If you joined the Retirement System 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 us or the Bureau of State Expenditures, your employment will be regulated by Section 211 or Section 212.

**If you joined the Retirement System
on or after May 31, 1973:**

Your earnings as an independent contractor or consultant with a public employer are regulated by Section 211 or Section 212 in the same manner as post-retirement employment with a public employer.

Service Credit

You will not receive Retirement System credit for service performed as an independent contractor or consultant if you rejoin the System 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 the Retirement System. In the event you are considering such a course of action, you'll need to be aware of the consequences of your decision.

The following information is a brief summary and applies only to service retirees of the New York State and Local Employees' Retirement System or the New York State and Local Police and Fire Retirement System who are rejoining the same System. Different information applies to retirees of other retirement systems, persons joining a different retirement 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 3 and 4 members do not have to contribute if they 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 must have one year of service after re-entering employment to be eligible for an active member death benefit. You may choose to:

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

OR

- Join the appropriate Retirement System 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. Please note that a new retirement date can result in a delay in receiving cost-of-living adjustments (COLAs) and may affect the calculation of your final average salary. In addition, 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.

... with less than two years of service credit

If you are a member of Tier 2, 3, 4, 5 or 6, 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 the service credit earned after your return to membership. 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 your service after the return to membership.

... with two or more years of service credit

Once you earn two or more 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.

Please note that, 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. You may repay the amount, plus interest, either in a lump sum or by installments before you retire again, or you may request a permanent actuarial reduction of the new pension calculated by us to account for the previously received benefits.

Members with two or more years of service credit who do not wish to repay previous benefits and receive a recalculated pension will have their original pension reinstated and will receive an additional benefit based on their service after the return to membership.

Before You Rejoin...

If you are seriously considering rejoining the Retirement System, we strongly urge you to contact us to discuss the matter more fully and to obtain additional information.

Since rejoining the Retirement System after returning to work may prove financially prohibitive, 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 New York State and Local Retirement System, you may join the new system only if the pension portion of your benefit is suspended. You will be assigned the same tier in the new system you had when you retired.

The other six public retirement systems in New York State are:

- 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 retired from PFRS, and became 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 your new retirement system is not the New York State and Local Retirement System (ERS or PFRS), please contact the appropriate system for more information.

Disability Retirees

Returning to Work

Unlike service retirees' earnings, almost all disability retirees' earnings, both public and private, are limited under the Retirement and Social Security Law. Two sections of the law, Section 102 for ERS and Section 402 for PFRS, govern post-retirement employment for disability retirees.

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 individual to each retiree and is the difference in any year between:

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

At your request, we will determine the amount of salary you can earn. We must contact your former employer for salary information and, once this information is received, we will notify you of your earnings limit.

If you return to work for an employer that participates in the same retirement system from which you retired, there are minimum salary requirements to rejoin. If this employment is at a salary equal to or in excess of the maximum salary described above, you will be required to suspend your pension and rejoin the retirement system.

When you reach the age at which you would have been eligible for a service retirement, or you would have had the required years of service in a special plan to be eligible for a service retirement, regardless of age, your earnings are no longer limited if you work in:

- Private employment; or
- Public employment covered by a different retirement system than the one from which you retired.

However, your earnings in public employment covered by the same retirement system from which you retired will be limited to the maximum salary of the next higher position from which you retired.

Reporting Your Earnings

As part of your Retiree Annual Statement, you will receive a Report of Post-Retirement Employment form. If you have had earnings after retirement, please complete the form and return it to us. If your reported earnings exceed the limit, we may reduce or suspend your pension to recover any amount earned over your limit.

Note: Section 217 of the RSSL requires school districts and BOCES to report annually to the Retirement System all public retirees (including independent contractors and consultants) on their payroll during the previous calendar year.

Receiving Service Credit

If you rejoin the Retirement System, your original membership will be reinstated and you will receive all service previously credited. This service will be considered in the calculation of any subsequent retirement benefit. You will not receive credit for post-retirement employment under Section 102 or Section 402.

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 help you 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, *After Retirement: 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.

VO1648

Printed: 7/17

Content Last Revised: 7/17

© 2017, New York State and Local Retirement System

Printed on recycled paper

