



The College at Brockport  
State University of New York

**Category:**

Office of Human Resources

**Responsible Office:**

Human Resources

**Policy Title:**

Re-Employment of Retirees

**Policy:**

Section 211 provides a waiver to the earnings limitation of **\$30,000 (as of 01/01/2007)**. The NYS Civil Service Commission may grant waivers under Section 211 for retired employees to be employed in positions in the classified service. The Presidents of State University of New York campuses may grant waivers under Section 211 for retired employees to be employed in positions in the unclassified service of the State University of New York. **However, certain criteria must be met in order to grant a waiver under the statute. Those criteria are:**

- 1. The retired person is duly qualified, competent and physically fit for performance of the duties of the position in which the retiree is to be employed;**
- 2. That there is a need for the retiree's service in such position;**
- 3. That there are no qualified persons available for recruitment to perform the duties of such position; and**
- 4. The employment of the retiree is in the best interest of the government service.**

The clear intent of the law is to restrict the circumstances in which an individual can simultaneously receive both a salary and a pension from the State. This is important to avoid any appearance of impropriety. Thus, it is incumbent upon all campuses to ensure that requests for Section 211 waivers are limited to those cases where no other alternative (such as hiring a new employee or training an existing employee) is available.

Knowledgeable, older workers are a tremendous asset to the state, and campuses are encouraged to consider ways in which these individuals provide their expertise and experience on a voluntary basis. However, the legal requirements must be complied with when hiring individuals who have previously retired from government employment. In order to comply with the statutory requirements, before resorting to hiring a retiree pursuant to Section 211, the prospective employer must conduct a search to determine whether there are "readily available for recruitment persons qualified to perform the duties" of the position. In addition, the request that is submitted to the Civil Service Commission or the campus president must, at a minimum:

- 1. describe the duties of the position to be filled;**
- 2. set forth the qualifications required of any individual to fill that position;**

3. describe the recruitment efforts which have been undertaken;
4. certify that the recruitment efforts failed to locate any qualified non-retired individuals to fill the position;
5. certify that the retiree is duly qualified, competent and physically fit to perform the duties of the position; and
6. explain why the employment of the retiree is in the best interests of the government service, including why the position cannot be filled through the transfer or training of existing state personnel.

Under Section 211 of the Retirement and Social Security Law, waivers may be granted for periods up to two years. As noted above, however, requests for such waivers should be made only rarely, and should be sought only for the time period that is absolutely necessary. If a request must be made to renew the employment of any individual after the completion of the two-year period, a new application with the necessary information must be submitted, and the prospective employer must again attest that no qualified persons are available for recruitment other than the retiree. A new search should be conducted before that attestation is made.

**If a retiree exceeds their earning limit under Section 212 and does not receive approval under Section 211, their pension may be reduced.**

#### Definition of Retiree

For the purpose of Section 211/212, a retiree is a person who is receiving a service retirement from ERS, TRS, or a NYC Public Retirement System. A member of the Optional Retirement Program (ORP) who separated from service at normal retirement age (55, or 50 in an incentive program) or older and has 10 years of service will be considered a retiree if they have received a retirement incentive or have begun to withdraw funds from their pension, either through annuitization or cash withdrawal.

Special rules apply to persons receiving a disability pension from a retirement system. They are not covered by Section 211/212. Other laws limit how much a disability pensioner may earn with the same or different employer. The rules are quite complex. If you are considering hiring a disability pensioner, you should check with the system from which they retired to determine their earnings limit prior to making an offer.

#### Definition of Earnings

**Earnings for purposes of the earnings limit calculation are amounts actually earned in the year in question.** Earnings do not include money earned in a prior year and received in the current year. Example: an employee retires on December 31, 2001. In January 2002 they receive a lump sum payment for unused vacation. That payment does not have to be included in 2002 earnings because it was earned in 2001.

**In the year of retirement, earnings refer only to money earned after the date of retirement.** Example: if an employee retires on September 1, 2002, only earnings for the period September – December, 2002 count towards the earnings limit.

Earnings in private employment (ex: the SUNY Research Foundation) do not count towards the earnings limit.

Earnings paid on Form 1099 count towards the earnings limit.

Re-Employment with the Same/Different Employer – Limited vs. Unlimited Earnings  
Under Section 211, retirees re-employed by the same employer from which they retired are subject to an earnings limitation. Retirees re-employed by a different employer are not subject to an earnings limitation.

For this purpose, all New York State agencies, including SUNY campuses, are considered one employer. Other entities are generally considered separate and distinct employers. For example, each school district is a separate employer. So is each local government, public authority, Board of Cooperative Educational Services, and public benefit corporation. Each community college is considered a separate employer, except that in most cases, a community college and its sponsoring county are considered the same employer (exception: Corning and Jamestown Community Colleges are considered independent). City University of New York is considered a separate employer. Here are some examples:

- ◆ A retiree from a SUNY campus is re-employed at the same campus – earnings are limited.
- ◆ A retiree from the NYS Dept. of Transportation is re-employed at a state-operated campus – earnings are limited.
- ◆ A retiree from the NYS Dept. of Transportation is re-employed at a community college – earnings are not limited.
- ◆ A retiree from Monroe County is re-employed at Monroe Community College – earnings are limited.
- ◆ A retiree from a public school is reemployed at a SUNY campus (state-operated or community college) – earnings are not limited.

**If a retiree was primarily employed by another employer but employed on a part-time basis at a SUNY campus, earnings will be limited if the campus employment occurred within two years of the employee's retirement date, and if the employee's pension is based in part on the campus service.**

Some examples:

- ◆ A retiree from a school district also taught until the date of retirement at a SUNY campus (state-operated or community college). Anyone in this situation should have had their SUNY service reported to TRS, so **earnings are limited.**
- ◆ A school district employee retired in 2001. He/she last taught at a SUNY campus in 1995, and now wants to be re-employed by that campus. **Earnings are unlimited.**
- ◆ A NYC firefighter who taught on an adjunct basis at a SUNY campus wants to be re-employed at the same campus. As the firefighter would have been in the NYC Fire Department Pension Fund, and could not possibly have participated in that system at SUNY, the earnings are unlimited.

**Note:** TRS allows part-time employees to elect whether to use their part-time salary in the calculation of final average salary. If they choose not to use the part-time salary in the calculation of final average salary, and they return to work post-retirement for the same employer for which they worked part-time pre-retirement, their earnings with that employer are unlimited. This election must be made before retirement benefits are received. (ERS does not allow this option)

Example: A professor is employed full-time at a community college and part-time at a state-operated campus. He/she retires. The state-operated campus has a full-time opening in that discipline, conducts a search and cannot find any qualified non-retirees for the position. They offer the position to the retiree. The retiree's earnings are limited if their salary at the state-operated campus in the two years prior to their retirement was used in the calculation of the final average salary, and their earnings are unlimited if it was not.

**Questions about whether a given employee's earnings are limited should be referred to the retirement system from which they retired or to the SUNY University-wide Benefits Manager for ORP retirees.**

#### Pension Membership

Employees rehired under Sections 211 and 212 may not rejoin their previous retirement system or elect to participate in a new retirement system. They may, however, participate in a tax-deferred savings program.

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#### **Procedure:**

##### Authorization of Waivers

The Presidents of State University of New York campuses may grant waivers to the earnings limitation of \$30,000 under Section 211 for positions in the unclassified service.

- **Waivers may be granted for periods up to two years.**
- **Acceptance of appointment over and above earnings limitation will be considered employee approval of reduction in pension benefits.**

#### Step 1

Before extending an offer of employment, ensure that a search has been properly conducted to determine whether there are no qualified persons available for recruitment to perform the duties of such position.

#### Step 2

When hiring a retiree pursuant to Section 211, the department is to withhold the salary offer until the maximum allowance has been verified by employee's retirement system. (See Step 3) The offer of salary is contingent upon appropriate retirement system's acceptance of our campus approved waiver.

#### Step 3

The department should prepare form UP-211 (Leave #'s 1-5 blank) and attach to the Appointment/Status Change Recommendation form for **any employee retired from ERS**

or **TRS or Optional Retirement** for earnings limitation determination. Forms should be sent to the Office of Human Resources.

Step 4

The department should attach and submit, **along with the UP-211 form and Appointment/Status Change Recommendation form**, the following additional documentation\*:

1. qualifications required of any individual to fill that position
2. description of recruitment efforts
3. certification that recruitment efforts failed to locate any qualified non-retired individuals to fill that position
4. explanation detailing why employment of the retiree is in the best interests of the government service, including why the position cannot be filled through the transfer or training of existing State personnel.

**Note: Retirees who are hired for a full-time position must be appointed from a search.**

\* Additional documentation can be supplied to the Office of Human Resources in Memorandum form

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**Forms:** -  
[Appointment Form](#)  
[UP-211 Form](#)

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**Reference:**

Section 150 of the Civil Service Law of New York state mandates that retired state or local employees may not be rehired by the state or a political subdivision and receive pension benefits while employed. Sections 211 and 212 of the Retirement and Social Security Law do provide for exceptions to this rule.

Section 212 allows a retired state or local government employee to earn up to **\$30,000 (as of 01/01/2007)** on a calendar year basis and continue to receive full pension benefits. There is no earnings limit for persons age 65 or older. Retirees reemployed under Section 212 do not need advance approval; the Employees Retirement System (ERS) and the Teachers Retirement System (TRS) send all retirees a mailing each year which includes a form on which to report Section 212 earnings for the previous year.