



ADMINISTRATIVE MEMORANDUM

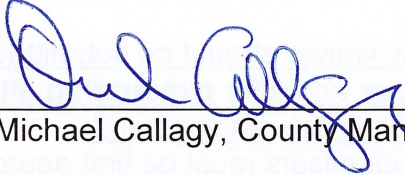
COUNTY OF SAN MATEO

NUMBER: E-16

SUBJECT: Post Retirement Employment

RESPONSIBLE DEPARTMENT: Human Resources Department

APPROVED:


Michael Callagy, County Manager

DATE: April 22, 2019

County Policy

It is the policy of San Mateo County that any department considering hiring a retired County employee (SamCERA retiree) as extra help¹ or engaging their services through a contract must follow all applicable state and federal requirements. Failure to comply may result in the termination of the employee's extra help status or contract.

It is also the policy that if the department is hiring a SamCERA retiree in a capacity other than a contract or extra help (e.g. in a permanent full time or part-time) then the retiree must unretire and become an active member of SamCERA. Such re-employment must follow the state law requirements described on page below.

Requirements for Hiring a SamCERA Retiree Either as Extra Help or Contractor

State Law Requirements

The state statutory restrictions are as follows:

1. SamCERA retirees shall not serve, be re-employed by, or be employed through a contract directly by the County except:
 - During an emergency to prevent stoppage of public business.
 - When the retiree has special skills or knowledge needed to perform work of limited duration.
2. SamCERA retirees are not eligible for such re-employment if the retiree received any unemployment insurance compensation arising out of prior employment during the 12-month period prior to reemployment. Human Resources can give the department the date when the retiree will become eligible for rehiring.

¹ For the reasons set forth below, retirees cannot be hired as Limited Term employees.

3. SamCERA retirees are not eligible to be re-employed for a period of 180 days following the date of retirement unless one of the following criteria applies:
 - **Safety Officers:** If the person retired as a County safety officer and is hired to perform a function that is regularly performed by a public safety officer, the 180-day restriction does not apply. However, the Internal Revenue Service may still require a 90-day break in service in some cases. See below for more details.
 - **BOS Resolution:** Board of Supervisors has certified that the re-employment is necessary to fill a critically needed position before the 180 days has passed. (Not on a consent calendar.)
 - i. Requests for a BOS 180-day waiver should be submitted only in extraordinary circumstances and after exhausting all other options for adequately covering the required work.
 - ii. Any request to the Board Supervisors must be first approved by the Human Resources Director and/or County Manager.
 - iii. Human Resources and SamCERA have request forms to be completed by the hiring department. The forms and instructions are available on the Human Resources website: <https://hr.smcgov.org/> and www.samcera.org.
 - iv. If the Board of Supervisors does approve hiring the retiree within 180 days of retirement, a 90-day Internal Revenue restriction might apply. (See below for more information on the 90-day IRS requirement)
4. If the retiree accepted any form of retirement incentive upon retirement, the retiree is subject to the 180-day break in service requirement, without exception.

Internal Revenue Service Requirements

In addition to the above conditions, Internal Revenue Service (IRS) requirements for working after retirement must also be satisfied. SamCERA regulations address the IRS restrictions, and provide:

1. A SamCERA retiree who retires at an age younger than normal retirement age must have at least a 90-day break in service, even if the retiree falls under an exception to the state law requirement of a 180-day break in service. The only exception to the 90-day break in service requirement is if such reemployment is to respond to an emergency declared by a government agency or an emergency that may prevent the stoppage of public business.
 - The normal retirement ages are: 60 for general members; 53 for safety members
2. A SamCERA retiree who retires at an age younger than normal retirement age cannot have a prearranged agreement, either oral or in writing, to return to work for the County.

- The prohibition against prearrangement of post-retirement employment applies regardless of the period of separation between retirement and reemployment.

Additional State Law Requirements During the Re-employment Period

If the above requirements are met and the retiree is hired as extra help or a contract is entered into, the following three requirements must be followed during the period of service:

1. The retiree performs services needing special skills or knowledge on a temporary basis for a limited duration.
2. The retiree provides no more than 960 hours of service during any fiscal year. Once the 960 -hour limit has been reached, the retiree must stop working immediately. If not, by statute, the retiree must be rehired into a position of regular employment and the retiree's pension will be suspended. A retiree cannot be hired as a Limited Term employee because of the 960-hour fiscal year limit and the Board of Retirement regulations which exclude Limited Term employees from active membership.
3. The retiree receives an hourly rate of pay within the salary range of employees performing comparable duties.

Required Forms for Extra Help or Contractor Positions

SamCERA has forms to be completed for all safety and general retiree members who are being considered for an extra help or contractor position. Departments should give the applicable form to the retiree, review the responses, complete its portion of the form and send a copy of it to SamCERA. These forms and instructions are available on SamCERA's website: www.samcera.org. Completed forms must be submitted to SamCERA prior to the commencement of services.

Hiring a SamCERA Retiree as a Full or Part-Time Permanent Employee

If the department is planning on rehiring a SamCERA retiree in a capacity other than a contract or extra help (e.g. in a permanent full time or part-time position) then the retiree must become an active employee member of SamCERA. The retiree's pension will be suspended during the time of active employment. No specific break in service is required, however, pursuant to Government Code section 31680.4, before the reemployment can commence, a doctor's note indicating the retiree is not incapacitated for the assigned duties is required and the reinstatement must be approved by the Board of Retirement.

Resolving Non-Compliance

Both the County and SamCERA retirees are required to follow these requirements. SamCERA will be of assistance to both the County and the retiree. For those retirees who did not meet the applicable separation period prior to post retirement employment or who exceed the 960 hours of service, and/or receive an out-of-range hourly pay rate, the County will notify the retiree that such post-retirement employment is terminated. Any steps to rehire the retiree at a later date must follow the provisions of this memorandum and will be coordinated with SamCERA.