



CTPF Administrative Rules –Return to Work

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Reviewed by: Joseph Burns, Board Counsel and Staff

Presented to Board:

Approved by Board:

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Proposed new Title, Chapter, and Section of Administrative Rule: **To be determined by Board Counsel**

CTPF Administrative Rules – Return to Work

The CTPF Administrative Rules and Regulations shall be amended to include the following Rules:

Title III: Benefits Chapter E: Limitations

Article 1 – Return to Work Limitations

III.E.101 Cancellation of Pension (40 ILCS 5/17-149).

- A. If any person receiving a disability retirement pension from the Fund is re-employed as a Teacher, their pension shall be cancelled on the date their re-employment begins, or on the first day of a payroll period for which service credit was validated, whichever is earlier, regardless of whether they are employed on a full-time, part-time, or temporary basis.
- B. If any person receiving a service retirement pension from the Fund is re-employed as a Teacher on a permanent or annual basis by an Employer, their pension shall be cancelled on the date the re-employment begins, or on the first day of a payroll period for which service credit was validated, whichever is earlier. However, subject to the limitations and requirements of Sections 102 and 103 of this Article, the pension shall not be cancelled in the case of a service retirement pensioner who is re-employed on a temporary and non-annual basis or on an hourly basis.

III.E.102 Temporary and Non-Annual Re-Employment. A Member's service retirement pension shall not be cancelled in the case of a service retirement pensioner who is re-employed as a Teacher, other than a driver education instructor, on a temporary and non-annual basis or on an hourly basis, provided the person does not

1. work as a Teacher for compensation on more than 120 days in a School Year; or
2. accept gross compensation for the re-employment in a School Year in excess of:
 - i. \$30,000; or
 - ii. In the case of a person who retired with at least 5 years of service as a principal, an amount that is equal to the daily rate normally paid to retired principals multiplied by 100.

For the purpose of subsection 2(ii) of this Rule, all certified administrators shall be considered "principals." Fund staff shall, on an annual basis, determine the rate normally paid to retired principals based on certified payroll data submitted by Employers during each School Year.

If a retiree works on more than 120 days or accepts excess gross compensation for such re-employment in any school year the service retirement pension shall be cancelled effective as of the first date on which the retiree exceeds either limitation.

III.E.103 Driver Education Instructors. As of July 1, 2017, a retiree's service retirement pension shall not be cancelled in the case of a service retirement pensioner who teaches **only** driver education courses after regular school hours and does not teach any other subject area, and so long as the person does not:

- i. work as a driver education instructor for compensation for more than 900 hours in a school year; or
- ii. accept gross compensation for the re-employment in a School Year in excess of the gross compensation limits set forth above in subsection 102 (2)(i) or (ii) as applicable.

If the retiree works more than 900 hours or accepts excess gross compensation for such re-employment in any school year the service retirement pension shall be cancelled effective as of the first date on which the retiree exceeds either limitation.

III.E.104 Notice of Re-Employment Required. To be eligible for re-employment without cancellation of pension, a retiree must notify the Fund in writing of his or her intention to accept re-employment.

III.E.105 Employer Responsibilities. An Employer must certify to the Fund the temporary and non-annual or hourly status and the compensation of each retiree in its employ at least quarterly, and when the pensioner is approaching the earnings limitation under Section 102 of this Article.

By submitting the reports required by this section, the Employer certifies that the information contained in the reports is true and correct to the best of its knowledge.

III.E.106 Determination of Limitation Exceeded. In accordance with Section 149 of the Code, Fund staff will determine if a retiree exceeded the return to work limitations from the certified records received by the Employer.

Upon determining that Employer records indicate that a retiree has exceeded the return to work limitations, Fund staff shall request from the retiree's Employer(s) a detailed report of the retiree's compensation and days of work. The Employer(s) shall submit the detailed report with a certification form, which shall be provided by Fund staff, certifying that the compensation and days of work are complete and accurate based on the school's business records.

III.E.107 Definition of a Day. For purposes of this Article, a retiree shall be deemed to have worked a "day" when an Employer reports the retiree worked for compensation as a Teacher for at least one hour in any calendar day. .

III.E.108 Use of Third-Party Employment Agencies. All retirees are subject to the return to work limitations as set forth in Section 149 of the Code, regardless of being designated as an employee of a third-party contractor, of an employment agency, or of any other vendor (collectively, "Third Party Vendor"). An Employer that uses a Third Party Vendor to provide licensed/certified teachers, including substitute teachers, or other licensed/certified staff is considered a joint employer with the Third Party Vendor and all such licensed/certified teachers are subject to the return to work limitations. An Employer has the obligation to secure, maintain, and provide to CTPF records of the retirees' employment by a Third Party Vendor as required by Section 149 of the Pension Code. A Charter School that uses a Third Party Vendor to provide paraprofessionals is considered a joint employer with the Third Party Vendor and all retirees in

such positions are subject to the return to work limitations.

III.E.109 Consultants and Independent Contractors. A retiree who contracts with an Employer to provide services in a position for which a license or certificate is required is subject to the return to work limitations, even if the retiree’s contract or agreement with the Employer characterizes the retiree as an “independent contractor.” An Employer has the obligation to secure, maintain, and provide to CTPF records of the retiree’s services, including as an independent contractor, as required by Section 149 of the Pension Code. Paying a retiree through accounts payable rather than through payroll does not exempt the Employer from being required to report the retiree to CTPF as required by Section 149 of the Pension Code.

[To be moved to Committee section of By Laws]

Appointment of the Return to Work Committee. The Return to Work Committee will consist of three to five Trustees appointed by the Board. The Return to Work Committee shall be responsible, *inter alia*, for recommending the appointment and retention of Hearing Officers for return to work matters, for reviewing Administrative Rules pertaining to retirees who return to work and for the oversight of such Rules, and for such other duties as assigned by the Board.

Title III: Benefits
Chapter D: Procedures

Article 1 – Return to Work Hearings

III.D/101 Notice of Violation

If the Fund determines that any retiree is in violation of the return to work restrictions contained in Chapter E of this Title, the Fund shall notify the Member by mail of the specifics of the violation, the estimated amount of any overpayment, their right to appeal the determination under this Article, and their right to request hardship consideration.

III.D/102 Request for a hearing.

Any Member who is identified as having violated the return to work restrictions contained in Chapter E of this Title may request an administrative hearing to dispute the determination or the amount of the overpayment, by sending a written request for a hearing to the CTPF Legal Department within 30 days of the date of the notice of violation from the Fund.

If CTPF does not receive payment or a written request for a hearing within 30 days of the date of the notice of violation, CTPF will automatically reduce the Member’s monthly pension benefit by up to 25% until the overpayment, including any health insurance subsidy, if applicable, is repaid. .

III.D/103 Conduct of the Return to Work Hearing.

If a Member requests an administrative hearing, the following procedures will be followed:

- (1) **Hearing Officer.** The Fund will appoint a Hearing Officer who will be responsible for conducting the hearings as set forth in this Article.

- (2) **Notice of Hearing.** The hearing will be held at the Fund's offices. No later than 60 calendar days before the scheduled hearing date, Fund Staff will issue written notice of the hearing, which will be sent to the retiree by certified mail, return receipt requested. The Hearing Officer will have the authority to grant continuances for good cause. Good cause is to be determined by the Hearing Officer, and may include, but is not limited to, the retiree's illness, significant prior commitment, or a death in the family.
- (3) **Pre-Hearing Exchange of Information.** All evidentiary documentation and/or stipulations shall be exchanged by the parties at least ten (10) calendar days before the date of the hearing. Copies of all documentation and stipulations so exchanged will be provided to the Committee and to the Hearing Officer at least ten (10) calendar days before the date of the hearing.
- (4) **Subpoenas.** No later than 21 days from the date of the Notice of Hearing, a retiree may request that the Fund issue a subpoena to compel the attendance of witnesses and/or the production of documents by submitting a request in writing to the Hearing Officer and identifying the witness and/or the documents sought to be produced. If the Hearing Officer deems the request reasonable, the Hearing Officer shall direct the Fund to issue the subpoena on behalf of the retiree. The retiree is solely responsible for serving the subpoena on the appropriate person or entity.
- (5) **Representation by Counsel.** The Fund will be represented at the hearing by Staff counsel or other counsel designated by the Chief Legal Officer. Retirees shall have the right to be represented by counsel or to represent themselves.
- (6) **Conduct of the Hearing.** The Hearing Officer will have full authority to control the procedure of the hearing, including, but not limited to:
 - i. To exclude witnesses;
 - ii. To admit or exclude testimony or other evidence;
 - iii. To change the order of the hearing; and
 - iv. To make any other necessary decisions and orders required for the creation of a full and fair hearing conducted in an orderly manner.
- (7) **Burden of Proof.** The Fund shall have the initial burden of proof to establish, by a preponderance of the evidence, that the relevant Employer's certified payroll data establishes the retiree violated one or more of the return to work restrictions contained in Chapter E of this Title.

If the Fund makes such a showing, the burden shifts to the retiree to establish, by a preponderance of the evidence, that the retiree did not work on more than 120 days (or 900 hours in the case of a driver's education instructor as provided in section III.E.103 of this Title) and did not accept compensation in excess of the applicable compensation limit contained in Chapter E of this Title.

- (8) **Order of the Hearing, Examination of Witnesses, and Introduction of Evidence.** All hearings will be conducted in the following order, unless the Hearing Officer provides otherwise:
- i. Opening statement by counsel for the Fund;
 - ii. Opening statement by the retiree;
 - iii. All documents properly exchanged pursuant to Section III.D/103(3) shall be admitted as exhibits;
 - iv. Counsel for the Fund presents case, including the examination of any CTPF witnesses;
 - v. The retiree may cross-examine the CTPF witnesses;
 - vi. The Hearing Officer and any Trustees present may examine any CTPF witnesses;
 - vii.
 - viii. Retiree presents case, including examination of any witnesses and introduction of any additional evidence;
 - ix. Counsel for the Fund may cross-examine any retiree witnesses;
 - x. The Hearing Officer and any Trustees present may examine any retiree witnesses;
 - xi. Counsel for the Fund and the retiree may make closing statements, at the discretion of the Hearing Officer;
 - xii. Hearing Officer closes the proceedings.
- (9) **Hearing Record.** All testimony at the administrative hearing shall be under oath and shall be recorded or transcribed by a court reporter provided by the Fund. The Fund shall order the original transcript for the Fund shall provide a copy of the transcript to the retiree at the Fund's expense. .
- (10) **Post-Hearing.**
- i. Within thirty (30) calendar days of receipt of the transcript, counsel for the Fund and the retiree may submit Proposed Findings of Fact and Conclusions of Law to the Hearing Officer. A party shall also send a copy of any Proposed Findings and Conclusions of Law to the opposing party. The Hearing Officer may grant a reasonable extension of time to file.
 - ii. The Hearing Officer shall prepare Findings of Fact and Conclusions of Law and a Recommended Decision, which shall be submitted to the Board of Trustees. The Hearing Officer may adopt all or part of the Proposed Findings of Fact submitted by counsel for the Fund or the retiree, and shall:
 - a. Summarize the evidence presented by each party;
 - b. State the Hearing Officer's finding regarding whether the retiree exceeded the return to work limitation of Section 17-149 of the Pension Code; and
 - c. State any other findings of fact or conclusions of law that are significant to the Hearing Officer's Recommended Decision.
 - iii. The administrative record, including all hearing exhibits, the transcript

of proceedings, any Proposed Findings of Fact and Conclusions of Law, and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Decision shall be made available on Board Docs to the Board of Trustees for consideration. The Board of Trustees shall, by majority vote, adopt or reject the Recommended Decision. The Fund will issue a written Final Administrative Decision to the retiree within seven (7) calendar days of the Board's adoption or rejection of the Recommended Decision.

The notification shall be sent to the retiree by first class and certified mail. The notification will include:

- a. The Board decision;
- b. The Hearing Officer's Findings of Fact and Conclusions of Law and Recommended Decision;
- c. Notification that the Board will not require or permit the filing of motions for reconsideration;
- d. Notification that the decision is final and appealable; and
- e. Notification of appeal rights pursuant to the Administrative Review Act. If the Board's Final Administrative Decision requires the retiree to repay any benefits to the Fund, the Fund shall notify the retiree of the amount of such repayment, repayment options available to the retiree, and the retiree's right to request hardship consideration.