COUNTY ADVISORY BULLETIN

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PUBLIC NOTICE & HEARING REQUIRED WHEN RE-HIRING A RETIREE TO THE SAME PUBLIC POSITION

Effective Date: September 26, 2003

Ohio Revised Code Sections Affected: 145.381 (enacted) & 145.38 (amended).

Ohio Administrative Code Affected: 145-1-79.

Background

During deliberations on the state biennial budget bill -- House Bill 95, a provision was added by Senator Jeff Jacobson (R-Dayton) that would require public employers who hire retirees of the Ohio Public Employees Retirement System (OPERS) to give public notice and conduct a public hearing regarding such employment. It is CCAO's understanding that there had been public concern expressed in the Dayton-area regarding the retirement of the Executive Director of the regional transit authority and the subsequent re-hire of this individual to the same position.

The language originally included in HB 95 was broadly written. It not only would have applied to the RTA example but would have applied to OPERS retirees who were hired into any public position. For example, the hiring of a Franklin County retiree by The Ohio State University to serve as an usher at an OSU football game would have triggered the public notice and hearing provision. In addition, the language in HB 95 originally would have penalized a retiree's pension should the public notice and hearing not have been conducted in accordance with the law. As a result of the language's broad nature, concerns were expressed by various parties.

Subsequently, the provision was narrowed to only affect certain individuals who retire and are re-hired to the same position. In addition, the employer scope was narrowed as well.

Boards of county commissioners, though, are still subject to the notice and hearing provision. In addition, the hiring of retirees under the State Teachers Retirement System and the School Employees Retirement System became subject to the public notice and hearing provision. Finally, the penalty provision was removed.

Provision

Ohio Revised Code 145.381 and Ohio Administrative Code (OAC 145-1-79) provide the following:

> *A board, commission, or legislative authority that proposes to continue the employment as a reemployed retirant or rehire as a reemployed retirant in the same position, a person who is or most recently has been employed by a public employer in a position that is customarily filled by a vote of the members of a board or commission or by the legislative authority of a county, municipal corporation, or township, shall certify on a form provided by the retirement system that both of the following have occurred:*
>
> *A. Not less than sixty days before the employment as a reemployed retirant was to begin, gave public notice that the person is or will be retired and is seeking employment with the public employer;*
> *B. Between fifteen and thirty days before the employment as a reemployed retirant was to begin and after complying with division (A) of this section, held a public meeting on the issue of the person being employed by the public employer.*

Key points include

- The provision is applicable to individuals who retire and are re-hired to the same position.

- The provision is applicable to hiring actions that are taken by a vote of the members of a board or commission or by the legislative authority of a county, municipality or township. Hence, hiring that is conducted by a board of county commissioners would be applicable, but hiring done by a county auditor, prosecutor, recorder, etc. is not.

  If a board of county commissioners has authorized its county administrator to handle personnel matters, does the public notice and hearing requirement apply? Good question. Counties should consult their county prosecutor for legal guidance. One of the first issues to consider is the type of authority that has been granted to an administrator. If the commissioners' resolution requires hiring actions to come back to the board, the public notice and hearing requirement would clearly apply. If the commissioners' resolution grants independent authority to the administrator, the law is open to interpretation.

Secondly, is the county administrator filling “a position that is customarily filled by a vote of the members” of the board of county commissioners? Or, is it customary for a county administrator to fill positions without a vote of the board when so empowered by a resolution of the board of county commissioners? What is “customary”? Again, counties should consult their county prosecutor for legal guidance.

- Employers subject to the provision must give public notice not less than 60 days before the employment of a re-employed retirant is to begin. The public notice shall include the time, date, and location at which a public meeting on this matter is to take place.

- Employers who are subject to this provision must conduct a public meeting on the matter.

- Once the public notice and hearing have been conducted and the employer still intends to hire the retirant, the employer must complete a form provided by the retirement system (OPERS) certifying the above process has been completed. Attached to this advisory bulletin is a copy of the form from OPERS.

As a result of this new requirement, can a board of county commissioners simply adopt a policy stating that it will not re-hire any retiree to the same position? CCAO would not recommend counties do this without seeking legal advice from your county prosecutor, as you might expose the county to age discrimination liability.

Additional Relevant Information (not changed by HB 95)

Health Insurance Coverage
Should a public employee retiree under OPERS and return to public employment, Ohio Revised Code Section 145.38 provides that the individual must receive primary health, medical, hospital, or surgical insurance coverage from the employer, if the employer provides coverage to other employees performing comparable work. Neither the employer nor the OPERS retiree may waive the employer’s coverage; however, the retiree can waive the employer’s coverage if he/she has coverage comparable to that provided by the employer from a source other than the employer or OPERS. If a claim is made, the employer’s coverage shall by primary coverage and shall pay first. The benefits provided by OPERS shall pay only those medical expenses not paid through the employer’s coverage or coverage the retiree receives through a source other than the retirement system.

This provision is only applicable when the OPERS retiree is re-employed by a public employer. OPERS is currently considering seeking legislative action to expand this provision to circumstances when a retiree is rehired by a private employer.

OPERS Benefits

Following is information from OPERS' web site (www.opers.org) outlining benefits a re-employment situation. This information is simply provided as a convenience, and individuals seeking clarification should contact the OPERS Employer Call Center directly at 1-888-400-0965.

Re-Employment

After a member retires, re-employment in a job covered by OPERS, including service in an elected position, may affect continuing receipt of an age and service retirement benefit. In the event a member becomes re-employed, they must notify the employer that they are receiving an OPERS benefit.

The following information includes general restrictions on re-employment. A member should contact OPERS to answer questions about specific situations prior to re-employment if they have a doubt about the effect on their benefit.

OPERS Retirees

OPERS age and service retirees may become re-employed in OPERS-covered positions. Contributions must begin from the first day of re-employment.

You should not be re-employed for at least two months after your effective retirement benefit date. This prohibition applies even if you waive salary for the two-month period. A retiree who returns to employment and has not been receiving a benefit for the required two months still must contribute, but will forfeit the current retirement allowance for each month in which re-employment occurs during those two months; contributions remitted during these two months are not includable in the calculation of the money purchase annuity which may be payable. You will continue to receive your retirement allowance. Contributions during re-employment will accrue toward a money purchase annuity. A money purchase annuity is based on the calculation of the sum of employee contributions for the period of re-employment, plus allowable interest, multiplied by two. This annuity is payable either at termination of the re-employment period or at age 65, whichever is later.

A re-employed retiree who has contributed to a money purchase annuity account and has retired from or terminated the re-employed position must take the money purchase annuity (either in a lump-sum or as a monthly benefit) by April 1 following attainment of age 70 1/2.

The employer must provide the re-employed retiree's primary health care coverage if it is available to employees in comparable positions. The employer health care coverage cannot be waived by the re-employed retiree. Suspension or forfeiture of the retirement allowance interrupts the retiree's health care coverage.

Elected Officials

If you are retired from OPERS and return to OPERS-covered employment as an elected official, you are treated as a re-employed retiree. If you are retired from another Ohio state retirement system and become a OPERS member as an elected official you are also treated as a re-employed retiree. However, if you are covered for non-elected official service and you are also an elected official contributing to Social Security for your elected position, your elected service has no effect on your OPERS retirement, and you are not a OPERS re-employed retiree for subsequent elected service.

There is a limitation for an elected official who retires from OPERS during a term of office and who is elected or appointed to the same office for the remainder of the term or the next consecutive term. For these elected officials, the retirement allowance is suspended, which results in a portion of the allowance being forfeited and a portion suspended for the term(s) unless the elected official:

- ✓ retired more than 90 days before the election;
- ✓ files a written notice of intent to retire with the county board of elections at least 90 days before the primary election; or,
- ✓ is appointed to the same position and notifies in writing the appointing authority that they are retired or intend to retire before the end of the term.

Independent Contractor

A retiree cannot continue to receive benefits and work as an independent contractor under a contract for any period of time for the employer from which they retired. This prohibition is applicable regardless of the number of hours or days actually worked.

A retiree may be compensated under a contract for services as an independent contractor for another public employer. If this occurs within the first two months of retirement, he or she will forfeit their retirement allowance for the entire period of service as an independent contractor.

If the retiree is an independent contractor, he or she is not eligible for membership in OPERS. The employer is liable for any overpayment resulting from lack of notice to OPERS.

Joint Retirement

If a retiree is receiving a benefit based on service covered by two or more of the Ohio non-uniformed state retirement systems (OPERS, STRS, or SERS) he or she will be subject to the re-employment restrictions applicable to the retirement system under which they are re-employed depending on which system pays the joint benefit. Re-employment in a position covered by one of the retirement systems participating in his or her benefit may affect continuation of the benefit.

Other Employment

A retiree may be employed in a position with a private employer and continue to receive benefits.

He or she may be employed in a position with a public employer which is not covered by OPERS and continue to receive benefits if otherwise eligible under the re-employment provisions described above.

Additional Information:

For further information, please contact either OPERS Employer Call Center at 1-888-400-0965 or Cheryl Subler, CCAO Senior Policy Analyst, at csubler@ccao.org or at (614) 221-5627.