

# SCHOOL AND COLLEGE LEGAL SERVICES *of California*

*A Joint Powers Authority serving school and  
college districts throughout the state*

*Reply to:*  
Santa Rosa Office  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@sclscal.org](mailto:santarosa@sclscal.org)

*Of Counsel*  
Robert J. Henry  
Virginia A. Riegel  
Janna L. Lambert

## LEGAL UPDATE

July 17, 2012

**To:** Superintendents/Presidents, Member Community College Districts

**From:** Marko Fong, Assistant General Counsel *MF*

**Subject:** Revision of STRS Retirement Earnings Exceptions  
Memo No. 08-2012(CC)

---

The exceptions to the dollar limit on postretirement compensation for State Teachers Retirement System (STRS) retirees expired on June 30, 2012. On July 17, the governor signed AB 178, which raises the retiree income limit and creates a one year exemption for individuals working to address fiscal and academic matters. As an urgency bill, AB 178 is effective immediately.

**The limit on STRS post-retirement compensation has been raised.**

AB 178 raised the post-retirement income limit to one-half the median compensation of all members who retired from service during the prior fiscal year. This is estimated to be about \$40,000<sup>1</sup> for 2012-13.

**The exception to the income limit for retirees who have not worked for 12 consecutive months since retirement has been discontinued.**

The Act removed Education Code §24214(e), which had permitted STRS retirees who had not performed “specified activities” for 12 consecutive months or more since retirement, to work for compensation that exceeded the retiree income limit.

If your district has STRS retirees who have been using this exemption and wish to not impact their STRS income, you must now limit their compensation to the new STRS limit per regular school year, or fit the position into one of the exceptions discussed below, or the individual must

---

<sup>1</sup> Education Code section 24214(f).

return to active employment if he/she wishes to continue working at a district position and receive pay in excess of the STRS limit.

**A new exception (one year only) has been created for trustees, administrators, or fiscal advisers who return to work to address academic or financial weaknesses of a school agency.**

Per Education Code §24214 (h), the following conditions must be satisfied for this exception to apply:

The position must be pursuant to:

- a. The duty to monitor and review the district's financial condition (Education Code §41320.1).
- b. Budget development, analysis, and review (Education Code §42122).
- c. Early warning program for program improvement under No Child Left Behind (Education Code §52055.57).
- d. Fiscal accountability, annual audit, and assessment of condition (Education Code §84040).

The position must be approved by either the State Superintendent of Public Instruction, the California Community Colleges Board of Governors<sup>2</sup>, or a county superintendent of schools.

The following items must be documented and certified prior to the retired employee's performance of any of the activities connected to the position and must be submitted to STRS to substantiate eligibility by either the Superintendent of Public Instruction, the Chancellor of the Community Colleges, or a county superintendent:

- 1) The position was first advertised to current active or inactive STRS members and no qualified individual was available for appointment.
- 2) The appointing authority then made a good faith effort to hire a retiree who would be willing to be reinstated to active STRS membership to take the position at the same salary offered in the first advertised position.
- 3) The appointing authority, having tried and failed to hire a current active member, then hired a retired STRS member and the salary does not exceed the salary offered when first advertised.
- 4) The appointment shall be terminated no later than June 30, 2013.
- 5) The salary paid cannot exceed the salary offered to currently active STRS members for the position.

---

<sup>2</sup> Note that for community colleges, the Board of Governors approves the position while the Chancellor must verify and submit information.

**The Act clarifies third party employer exception.**

A STRS retiree who is employed by a third party employer that delivers services to an educational agency is not subject to the limitation provided:<sup>3</sup>

- 1) The assignment is limited-term. It must have a clear end date.
- 2) The third party employer does not participate in a California public pension system.
- 3) The activities performed by the STRS retiree are not normally performed by employees of the school agency.

Condition #3 greatly limits what a retiree can do via a third party employer and be exempt from the earning limitation.

**The Act allows retirees to be reinstated as active and then return to retirement without the one year waiting period.**

A retiree who returns to active status is no longer required to wait one year before returning to retired status and receiving benefits as a retiree. However he/she shall not be able to change the retirement option or the beneficiaries listed at the time of the original retirement.<sup>4</sup>

Please contact any attorney in this office if you have questions about this update, the employment of a STRS retiree, or the configuration of any positions to be filled by a STRS retiree.

---

<sup>3</sup> Education Code section 24214(k).

<sup>4</sup> Education Code §24208(c) and (d). Education Code §24204(a)(3) was amended to remove the 12 month waiting provision