MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION

RETIREE RETURN TO COVERED EMPLOYMENT POLICY

I. PURPOSE AND BACKGROUND

In 2013 the California State Legislature instituted broad pension reforms with the enactment of the Public Employees' Pension Reform Act (PEPRA). These reforms imposed additional restrictions on MCERA retirees who return to work in Covered Employment. For purposes of this Policy, Covered Employment means either the employment or the contracting for services of a MCERA retiree by any MCERA plan sponsor (Mendocino County, Mendocino County Superior Courts and Russian River Cemetery District).

PEPRA also shifted the oversight responsibilities to public pension plans in several new areas. With respect to MCERA retired members, PEPRA transformed what was traditionally an employer oversight function into a shared auditing, monitoring and oversight function between the employer and the public pension plan. Retirees and plan sponsors need to be cognizant of this change and the additional restrictions imposed when a MCERA retiree enters Covered Employment; otherwise the MCERA retiree risks jeopardizing his/her retirement benefits.

MCERA retirees frequently return to the workforce after retirement; and they are free to do so without MCERA approval. However, if the retiree returns to Covered Employment, there are restrictions on how quickly the retiree can return to Covered Employment and how many hours he/she can work annually in Covered Employment. This policy is intended to assist retirees and plan sponsors to assure that the post-retirement employment relationship is in compliance with the law.

MCERA retirees working in any situation other than Covered Employment are generally free to work without restrictions or penalties. When MCERA retirees choose to work for employers that are not MCERA plan sponsors, it is permissible for the retiree to earn the income from that employment and continue to collect their MCERA retirement allowance. Because such employment relationships do not meet the definition of Covered Employment, the restrictions outlined below do not apply.

MCERA retirees are encouraged to contact MCERA to discuss returning to Covered Employment prior to doing so to fully understand the requirements. The consequences for failure to follow the laws and rules regarding a return to Covered Employment can be significant. MCERA staff is here to help you understand the requirements and avoid any negative impacts.

II. POLICY OBJECTIVES

This policy is adopted in order to ensure MCERA complies with its Plan Documents and to provide clear guidance to Members regarding requirements for returning to Covered Employment after MCERA retirement.

III. POLICY GUIDELINES

A. ELIGIBILITY TO RETURN TO COVERED EMPLOYMENT

1. PEPRA REQUIREMENTS

For a MCERA retiree to be eligible to return to Covered Employment, PEPRA requires the retiree have a 180 day break in service, unless the Covered Employment qualifies for an exception from the 180 break in service requirement. MCERA retirees may qualify for an exception by either:

a. The Covered Employment is in a public safety position, or

b. The employer certifies by a vote of the governing body on a non-consent agenda item that two conditions exist: (1) either there exists an emergency requiring the retiree return to Covered Employment to prevent the stoppage of public business or the retiree has skills needed to perform work of limited duration in Covered Employment; and (2) that the appointment of the retiree is necessary to fill a critically needed position before the 180 day break in service.

These exceptions to the PEPRA required break in service do not apply in certain situations. To ensure eligibility to return to Covered Employment, the retiree is encouraged to contact MCERA to discuss the specifics of their situation.

2. INTERNAL REVENUE CODE REQUIREMENTS

If the retiree is less than the MCERA defined "Normal Retirement Age", then there are additional requirements to be eligible to return to Covered Employment. Normal Retirement Age for MCERA is defined by the MCERA Regulation for Internal Revenue Code of 1986 (IRC) Section 401(a) – Normal Retirement Age adopted by the Board of Retirement in Resolution 2014-08. The regulation specifies the Normal Retirement Age as age 62 for General Members and 50 for Public Safety Members.

Before returning to Covered Employment, a MCERA retiree that is less than the Normal Retirement Age must have a bona fide break in service as outlined in the MCERA Regulations for the Internal Revenue Code of 1986 (IRC) Section 401(a) – Return To Work and Separation From Service, adopted by the Board of Retirement in Resolution 2014-08. The regulations require both of the following: (i) that the member has not entered into a predetermined agreement to return to work, and (ii) a minimum 60 day break in service for a member who is less than the Normal Retirement Age, regardless of whether the exceptions to the PEPRA required 180 day break in service outlined above are satisfied.

3. EXCEPTION TO PEPRA AND INTERNAL REVENUE CODE REQUIREMENTS

The only allowed exception to the eligibility requirements outlined in subsections 1. and 2. above is for emergency situations as defined in Government Code section 8558. MCERA requires certification from the employer that the Covered Employment of the retiree is directly related to the emergency situation. MCERA will review the certification from the employer as well as other sources of information and may reject the exception to the eligibility requirements to

return to Covered Employment by sending a notice of such to both the employer and the MCERA retiree.

B. CONSEQUENCES OF VIOLATING ELIGIBILITY TO RETURN TO COVERED EMPLOYMENT

If a MCERA retiree returns to Covered Employment without meeting the eligibility requirements in Section A. above, the member is required to reinstate to active employment status as of the date the retiree returned to Covered Employment. Reinstatement to active employment status and the corresponding consequences are outlined in Section E. below.

In addition to the reinstatement to active employment status, the MCERA retiree may be required to return to MCERA any retirement benefit payments that are determined to have been paid after the member was reinstated to active employment status. Such payments shall be classified as overpayments and handled in accordance with the MCERA Board adopted Overpayment Policy.

C. LIMITS ON COVERED EMPLOYMENT

Once a MCERA retiree has established eligibility to return to Covered Employment, they are subject to limits on the amount of work they are eligible to perform in Covered Employment. MCERA retirees may not work or be compensated for more than 960 hours in any fiscal year. The rate of pay for a MCERA retiree that returns to Covered Employment must be in line with that of other employees performing comparable duties.

1. FULL-TIME, PART-TIME OR EXTRA HELP EMPLOYMENT

   The employer shall report the hours worked in full-time, part-time or extra help employment by a MCERA retiree in Covered Employment to MCERA each pay period. It is the responsibility of the MCERA retiree to ensure compliance with all MCERA plan documents regarding Covered Employment. Retirees should carefully monitor their hours worked in Covered Employment to ensure they do not exceed the limits.

   The accumulation of hours worked in a fiscal year is based on the date of payment for the hours. For example, if a MCERA retiree works in Covered Employment in late June for which they receive payment in early July, those hours count toward the 960 hour limit in the new fiscal year since the employee was paid in the new fiscal year.

2. CONTRACT FOR SERVICES

   A MCERA retiree that returns to Covered Employment via a contract for services is required to submit a copy of the approved contract with the employer and all invoices under the contract for services to MCERA. MCERA will review the contract and subsequent payments to determine the number of hours worked in Covered Employment. It is the responsibility of the MCERA retiree to ensure compliance with all MCERA plan documents regarding Covered Employment. Retirees should carefully monitor their hours worked in Covered Employment to ensure they do not exceed the limits.

3. EXCEPTION TO LIMITS ON COVERED EMPLOYMENT

The only allowed exception to the limits on Covered Employment outlined in this section is for emergency situations as defined in Government Code section 8558. MCERA requires certification from the employer that the Covered Employment of the retiree is directly related to the emergency situation. MCERA will review the certification from the employer as well as other sources of information and may reject the exception to the limit on Covered Employment by sending a notice of such to both the employer and the MCERA retiree.

D. CONSEQUENCES OF VIOLATING LIMITS ON COVERED EMPLOYMENT

If a MCERA retiree who is eligible to return to Covered Employment exceeds the limits on Covered Employment outlined in Section C. above, the retiree is required to reinstate to active employment status as of the date the retiree exceeded the limit on Covered Employment. Reinstatement to active employment status and the corresponding consequences are outlined in Section E. below.

In addition to the reinstatement to active employment status, the MCERA retiree may be required to return to MCERA any retirement benefit payments that are determined to have been paid after the member was reinstated to active employment status. Such payments shall be classified as overpayments and handled in accordance with the MCERA Board adopted Overpayment Policy.

1. EXCEPTION TO REINSTATEMENT FOR DE MINIMUS VIOLATION OF LIMIT ON COVERED EMPLOYMENT

If a MCERA retiree that has returned to Covered Employment status, exceeds the limits on Covered Employment outlined in Section C. above by a de minimus amount, then the member may agree to a reduction in their next monthly retirement benefit payment by the amount of earnings in excess of the limit on Covered Employment. Such agreement will be on a form as set forth by MCERA and shall be signed by the retiree.

If the retiree does not agree to the reduction in the next monthly retirement benefit, then the retiree is required to reinstate to active employment status. Reinstatement to active employment status and the corresponding consequences are outlined in Section E. below.

If a retiree agrees to the reduction in the next monthly retirement benefit and subsequently further exceeds the limits on Covered Employment, the retiree is required to reinstate to active employment status. Reinstatement to active employment status and the corresponding consequences are outlined in Section E. below.

E. REINSTATEMENT TO ACTIVE EMPLOYMENT STATUS

Upon the reinstatement of a MCERA retiree to active employment status, MCERA is required to suspend the member's retirement benefit until such time as the member retires from active employment status or provides evidence to MCERA that the member should not be reinstated to active employment status. Any MCERA retiree that is reinstated to active employment status under this Return to Covered Employment Policy shall have their retirement benefit suspended at least one month.

Once a retired member is reinstated to active employment status, the member will remain in such status until the member retires from active employment. After reinstatement to active employment status the member and employer are responsible for remitting all required retirement contributions in accordance with MCERA plan documents. The member will be eligible for an additional retirement benefit based upon the service and salary earned after reinstatement to active employment status. The suspended retirement benefit is not changed in any way due to the reinstatement to active employment and subsequent retirement.

F. APPEAL OF RETIREE RETURN TO COVERED EMPLOYMENT DECISION

A member may appeal an administrative decision related to this policy in accordance with the Administrative Hearing Policy adopted by the MCERA Board.

IV. POLICY REVIEW

This Policy is subject to change in the exercise of the Board's judgment. The Board shall review this Policy at least every three years to ensure that it remains relevant and appropriate and consistent with state and federal laws and regulations.

V. POLICY HISTORY

This policy was adopted by the Board of Retirement on September 19, 2018.