ORANGE COUNTY OCERS EMPLOYEES RETIREMENT SYSTEM

OCERS Administrative Procedure (OAP)

Retirees Returning to Work

I. Purpose

This OCERS Administrative Procedure ("OAP") describes legal requirements and procedures regarding retired members of OCERS who wish to return to work for an OCERS-covered employer (i.e., OCERS plan sponsor, or "Employer"). This OAP does not apply to OCERS retirees who choose to work outside of OCERS-covered employment. Those members may do so without interruption of their OCERS retirement benefit.

II. Authority

This OAP is established by OCERS' Chief Executive Officer ("CEO") pursuant to the CEO Charter, in conformance with applicable OCERS' Board policies and in compliance with the provisions of the County Employees Retirement Law (Title 3, Division 4, Part 3, Chapter 3 & 3.9 of the California Government Code, sections 31450, et seq.) ("CERL") and the Public Employees' Pension Reform Act (Government Code sections 7522, et seq.) ("PEPRA").

III. Working without Reinstatement to OCERS Membership

A. Reemployed due to emergency, or special skills or knowledge. Retired members may return to work for an Employer, without reinstatement to OCERS membership or interruption of their retirement benefit, *only* when they are reemployed either: (1) during an emergency to prevent stoppage of public business; or (2) because the member has special skills or knowledge needed to perform work of a limited duration.[1]

Reemployment without reinstatement must also follow these rules and requirements:

1. **No additional retirement credit or rights**. Retired members will not acquire additional service credit or retirement rights for their reemployment.[2]
2. **Yearly limit to hours/days worked**. The reemployment must not exceed a total of 960 hours or 120 working days, whichever is greater, per year (fiscal or calendar year as set by the Employer).[3]
3. **Limited duration.** "Limited duration" means the assignment is neither permanent nor of indefinite duration.
4. **Retirees who received a retirement incentive**. A retired member who received additional service credit as a retirement incentive[4] will forfeit the additional service credit unless their

[1] Gov. Code, § 7522.56.
[2] Gov. Code, § 7522.56, subd. (d).
[3] Gov. Code, § 7522.56, subd. (d).
[4] Gov. Code, § 31641.04.

reemployment is a temporary callback limited to a maximum of 720 hours of service in any one year.[5]

5. **Rate of pay**. The monthly rate of pay must be what the Employer pays other employees who perform similar duties. The monthly rate is divided by 173.333 to determine an hourly rate.[6]
6. **Mandatory wait periods**.[7]
   a. *180-day wait period and exceptions.* A retired member may not return to work for a period of *180 days* following their date of retirement unless one of these exceptions applies:
      i. The Employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed; and the Employer's governing body has approved the appointment in a public meeting where the matter was not a consent item on the agenda; or
      ii. The retired member is a public safety officer or firefighter hired to perform function(s) regularly performed by a public safety officer or firefighter.

      These exceptions are not available for retired members who received additional service credit as a retirement incentive; such members must wait the full 180-day period.[8]
   b. *Unemployment insurance.* A retired member who received unemployment insurance compensation related to employment with an Employer is not eligible to be reemployed for a period of *twelve (12) months* following receipt of such compensation. When accepting an offer of employment, the retired member must certify in writing to the Employer that they have complied with this requirement.[9]
7. **IRS rules regarding in-service distributions.**[10] The retired member's reemployment must comply with IRS rules regarding in-service distributions. In all cases, *prearranged agreements with Employers to return to work after retirement are prohibited*. In addition, the member must satisfy one of the following:
   a. The member has reached age 59½;
   b. The member has reached the "normal retirement age" under their plan with OCERS: age 62 for general members and age 50 for safety members[11]; or
   c. The member had a bona fide separation from service, which means:
      i. Before retiring, there was no agreement between the member and Employer for the member to return to work; and
      ii. Before returning to work, the member was separated from service for at least the greater of:

[5] Gov. Code, § 31641.04, subd. (f).
[6] Gov. Code, § 7522.56, subd. (d).
[7] Gov. Code, § 7522.56, subd. (f).
[8] Gov. Code, § 7522.56, subd. (g).
[9] Gov. Code, § 7522.56, subd. (e); Gov. Code, § 31680.6.
[10] Gov. Code, §§ 31485.20, 31485.21; Int. Rev. Code, § 401(a); OCERS Regulations for Code § 401(a)(36) Normal Retirement Age; OCERS Resolution No. 22-001.
[11] OCERS Regulations for Code § 401(a)(36) Normal Retirement Age.

(A) the period of separation required under PEPRA (i.e., the mandatory wait period of 180 days unless an exception applies, or twelve (12) months from receipt of unemployment insurance compensation); or
(B) fifteen (15) calendar days.

Emergency Declaration Exception: The member may be reemployed before the required separation periods when it is in response to an emergency declared by the State of California, as defined by Government Code section 8558.[12]

B. Independent contractors. A retired person shall not serve, be employed by, or be employed through a contract directly by an Employer unless they are reinstated to active membership.[13] Thus, independent contractors hired directly by an Employer are subject to the restrictions enumerated in Section III.A, above.

C. Special service positions. Retired members occupying the following special service positions may perform services for compensation without reinstatement, and they are not subject to the requirements of Section III, subdivision A, above.

1. *Elective Officers.*[14] Retired members may serve as an elective officer without reinstatement from retirement and without loss or interruption of benefits. Any portion of their retirement allowance based on service in that elective office, however, will be suspended while serving in that office. The full allowance, including the suspended amount, will be paid once the member leaves that office.
2. *Nonsalaried member of a board or commission*.[15] Retired members may serve as nonsalaried members of a part-time board or commission without reinstatement, whether elected or appointed. They will not acquire benefits, service credit, or retirement rights, but they may receive any per diem that is given to all members of the board or commission.

D. Violations; Employer's duties.[16]

1. *Employer's duty to notify employee.* For retired members who are reemployed without reinstatement, Employers must provide them with written notice, by first-class mail, email, or other appropriate means, of the employee's status and need to comply with the yearly limit for working hours or days (i.e., 960 hours or 120 days) before the employee is within ten (10) business days or 80 hours of reaching the yearly limit.[17]

[12] OCERS Board Resolution No. 22-001; Gov. Code, § 8558.
[13] Gov. Code, § 7522.56, subd. (a).
[14] Gov. Code, §§ 1234, 31680.15
[15] Gov. Code, § 31680.16.
[16] Gov. Code, § 31680.9.
[17] Gov. Code, § 31680.9(g).

2. *Member's violation.* A retired member whose reemployment violates Section III of this OAP[18] is subject to all of the following:
    a. Any retirement allowance paid during periods of employment that are in violation will be considered an overpayment, which the member will reimburse to OCERS.[19]
    b. If the member is reinstated, they must pay OCERS an amount equal to the employee contributions that would have been paid during the period of violation, plus interest, consistent with the OCERS Overpaid and Underpaid Plan Contributions Policy.[20]
    c. The member will reimburse OCERS for reasonable administrative expenses incurred in responding to the violation to the extent OCERS determines the member was at fault.[21]
3. *Employer's violation.* An Employer who employs a retired member in violation of Section III.A of this OAP is subject to all of the following:
    a. If the member is reinstated, the Employer must pay OCERS an amount equal to the employer contributions that would have been paid during the period of violation, plus interest, consistent with the OCERS Overpaid and Underpaid Plan Contributions Policy.[22]
    b. The Employer will reimburse OCERS for reasonable administrative expenses incurred in responding to the violation to the extent OCERS determines the Employer was at fault.[23]
4. *Employer's duty to report.* For retired members reemployed in any capacity, Employers must report the pay rate, number of hours worked, and other information deemed necessary in accordance with OCERS Employer Handbook.[24] When an Employer fails to timely report, OCERS may assess a fee until the information is reported.

IV. Reemployment without Reinstatement; Membership Eligibility

OCERS Board Policy on Membership Eligibility Requirements identifies the rules used to determine when an employee is eligible for membership and whether membership enrollment is mandatory. For retirees who wish to be reemployed without reinstatement, the Membership Eligibility Requirements cannot be applied in a manner to circumvent the requirements of this OAP.

For example, if an "extra help" employee is hired with the expectation of working and in fact, works less than 1,040 or 1,600 hours per year (depending on whether they occupy a "standard" or "exceptional" extra help position), such an employee is excluded from membership. However, a *retired member* who seeks to be reemployed without reinstatement must abide by the requirements of Section III, above.

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[18] Gov. Code, § 31680.9(b) enumerates the consequences of violating the requirements of Government Code sections 31680.2, 31680.3, 31680.6, or 7522.56, which are described in Section III of this OAP.
[19] Gov. Code, § 31680.9(b)(1).
[20] Gov. Code, § 31680.9(b)(2).
[21] Gov. Code, § 31680.9(b)(3).
[22] Gov. Code, § 31680.9(c)(1).
[23] Gov. Code, § 31680.9(c)(2).
[24] https://www.ocers.org/sites/main/files/file-attachments/ocers_employer_handbook_04-28-2026.pdf

Their work must not exceed a total of 960 hours or 120 working days, whichever is greater, per year.

Similarly, newly hired members, age 60 or over, may choose to waive membership.[25] However, a retired member, age 60 or over, must satisfy the requirements provided in Section III, above, in order to be reemployed without reinstatement.

V. Reinstatement to Active Membership

Retired members who seek reemployment and do not satisfy the requirements for working without reinstatement, as provided in Section III of this OAP, above, may apply to reinstate to active OCERS membership. The effective date of reinstatement shall be the first day of the month following the date of reemployment.[26]

A. Reinstatement process.[27]

1. *Application for reinstatement.* The member must file an application for reinstatement by submitting the following: (a) a letter from the member requesting reinstatement and identifying the employer and position; (b) documentation verifying the employer's offer and terms of reemployment[28]; (c) the employer's job description; and (d) a letter or report signed by a physician opining that the member is capable of performing the usual duties of the position for which they are being reemployed. All documents should be delivered to OCERS Disability section.
2. *Membership eligibility.* OCERS will review the application to confirm the member is eligible for reinstatement.
3. *Medical examination.* Once the application has been properly filed and eligibility for reinstatement confirmed, the member will be scheduled for examination by OCERS Independent Medical Examiner (IME) to determine whether the member is capable of performing the duties of the position for which they are being reemployed.
4. *Board determination.* The member's application for reinstatement will be placed on the Board's regular agenda to be approved, denied, or for other appropriate action by the Board. The member will not be reinstated until the Board has approved the application.

B. Elective officer.[29] Retired members who seek reinstatement as an elective officer are not subject to the reinstatement process described in Section V.A., above. An elective officer may be reinstated upon filing a declaration with the Board. In addition, within 60 days after the expiration

[26] Gov. Code, § 31680.4.
[27] Gov. Code, § 31680.4.
[28] For terms of reemployment, OCERS must be able to verify that the member is expected to be employed for more than one year and work at least 1,040 hours per year.
[29] Gov. Code, § 31553.

of the term of office or within 60 days after ceasing to hold office, the elective officer may rescind their declaration for reinstatement and withdraw their contributions.

C. PEPRA-compliant plan.[30] Reinstated members will be enrolled in a PEPRA-compliant plan for the period of reinstatement. This applies even if the member previously retired under a Legacy plan.[31] Thus, the member's age and contribution rate are based on the date of their reinstatement.

D. Retirement allowance.[32] Once reinstated, the member's retirement allowance is suspended and will resume only after they retire from their reemployment. The total retirement allowance will be the sum of: (a) an allowance based on service credited after reinstatement, and (b) the allowance they were receiving prior to reinstatement with the addition of cost-of-living adjustments (COLA) that would have applied during the period of reinstatement.

E. Disability Retirement.[33] Retired members, who become incapacitated for duty after reinstatement, may file an application for disability retirement. If they are granted a service-connected disability retirement, their total disability allowance will be the greater of either: (1) one-half of their final compensation, or (2) their allowance as provided in the preceding paragraph, D. If granted a nonservice-connected disability retirement, their total disability allowance will be as provided in the preceding paragraph, D.

[30] Gov. Code, § 31680.5.
[31] Id.
[32] Gov. Code, §§ 31680.4, 31680.5.
[33] Gov. Code, §§ 31680.5