

PERSONNEL SERVICES BULLETINS (PSBs)

200-8

Subject: Retirement and Social Security Law Section 211 Waiver Requests

Supersedes: PSB 200-8 Retirement and Social Security Law Section 211 Waiver Requests issued January 19, 2016

Source: Civil Service Law, Section 150; New York City Charter, Section 1117; Retirement and Social Security Law, Sections 211 and 212, Chapter 640 of the Laws of 2008

Date: January 27, 2020

I. BACKGROUND

New York Civil Service Law, Section 150 (CSL § 150) and New York City Charter, Section 1117 (Charter § 1117) require the suspension of a pension received by a retiree from a retirement system of the State or a subdivision if that retiree receives any compensation from post-retirement public service with New York State or a subdivision. Employees who have vested/deferred and are not receiving a pension are not restricted under this policy.

The pension suspension requirement applies to retirees returning to employment in the classified service of the City, the Comptroller, the City Council, the Public Advocate, the Offices of the District Attorneys and Public Administrators, Borough Presidents and Community Boards, and the non-pedagogical staff of the Department of Education. Retirees who joined the pension system on or after May 31, 1973 who are appointed as independent contractors or consultants are also subject to the requirements of CSL § 150 and Charter § 1117.

Earnings for working as a juror, an inspector of elections, a poll or ballot clerk, a notary public, or a commissioner of deeds will not result in suspension of a pension under CSL § 150 or Charter § 1117.

II. POLICY - Modification of the Pension Suspension Requirement Pursuant to the New York State Retirement and Social Security Law

Sections 211 and 212 of the New York State Retirement and Social Security Law (RSSL) modify the pension suspension requirement of CSL § 150 and Charter § 1117, allowing a civil service retiree to accept civil service re-employment without loss or reduction of pension payments under some circumstances.

A retiree receiving a disability pension cannot utilize Sections 211 and 212. Disability retirees are subject to Charter § 1117 and to the applicable New York City Administrative

Code/BERS Rules pertaining to disability retirement safeguards. All such employment for disability retirees is to be reported to the applicable pension system.

A. Section 212

Section 212 allows a retiree under the age of sixty-five (65) to accept civil service re-employment and earn up to \$35,000 in a calendar year without any effect on his or her retirement allowance. A civil service retiree who wishes to accept employment subject to the salary cap must notify the retirement system from which he or she receives a pension that he or she has elected to have the provisions of Section 212 apply. If a retiree electing Section 212 coverage earns more than \$35,000 during the calendar year without receiving a Section 211 waiver approval, the retiree's benefit may be reduced or suspended and the retiree may be liable to reimburse the pension system.

During or after the calendar year in which a civil service retiree attains age sixty-five (65), Section 212 permits him or her to accept civil service re-employment with no income limitation.

B. Section 211

Section 211 permits the New York City Department of Citywide Administrative Services (DCAS) to grant a waiver of the pension suspension or reduction at the request of a prospective employer. DCAS reviews requests for Section 211 waivers for positions in the classified service of the City of New York, the Comptroller, the City Council, the Public Advocate, the Offices of the District Attorneys and Public Administrators, Borough Presidents and Community Boards, and the non-pedagogical staff of the Department of Education.

An earnings limitation may apply even if a retiree returns to work for a former employer with a Section 211 waiver. A former employer is a public employer that directly paid the salary of a retired person at any time during the two years immediately preceding retirement and that paid the salary on which the retiree's retirement allowance is based. For example, a retired New York City Police Department employee returning to work for the New York City Administration for Children's Services would be returning to work for a former employer, the City of New York.

Questions concerning whether an earnings limitation applies should be directed to the employee's retirement system. If an earnings limitation applies, the employee's retirement system will notify the hiring agency and the employee.

There is no limitation on the earnings of a retiree re-employed under a Section 211 waiver in a position which is not in the service of a former employer. For example, there is no income limitation for a Police Department retiree returning to work with a Section 211 waiver at a District Attorney's Office.

Each Section 211 waiver may be granted for up to two years during which the retiree may continue to receive his or her pension benefit in addition to his or her salary. Approval under Section 211 is meant to be temporary or on a short-term basis when possible. It is not meant to provide a retiree with a second career in government,

particularly when it can be shown there are other qualified non-retirees seeking promotion or employment for the same position.

DCAS approval of a Section 211 waiver request is not approval of an appointment, and all other documents and approvals required to effectuate the retiree's employment must be submitted as required.

III. PROCEDURE

A. Waiver Application - Statutory Requirements

Under Section 211, as amended by Chapter 640 of the Laws of 2008, the prospective employer must submit to DCAS an application which contains detailed reasons demonstrating that:

1. The retiree is duly qualified, competent and physically fit to perform the duties of the position in which he or she is to be employed;
2. The prospective employer has prepared a detailed recruitment plan to hire a non-retiree into the position in the future;
3. The retiree's employment is in the best interest of government; and
4. Either (a) there is an urgent need for his or her services as a result of an unplanned, unpredictable, unexpected vacancy and sufficient time is not available to recruit a qualified individual and that such hiring shall be deemed as non-permanent rather than a final filling of such position; or (b) the prospective employer has undertaken extensive recruitment efforts and has determined that there are no available, qualified non-retirees for the position.

Pursuant to Chapter 640, an agency is not required to provide evidence that it has prepared a detailed recruitment plan to request an extension of a Section 211 waiver that was originally granted before October 7, 2008.

Section 211 prohibits a retiree from returning to work "in the same or similar position for a period of one year following retirement." A retiree cannot return to a same or similar position until he or she has been off of the payroll for one year. A retiree's terminal leave time may not be counted towards the one year separation period from service.

Whether a position is the "same or similar" is determined based upon the submissions of the requesting agency. Evidence that a retiree is performing the tasks he or she undertook as an employee prior to retirement in a different title, or has used the waiver to work in the identical job for another jurisdiction so that he or she may receive both a pension and salary for the same tasks, will weigh strongly against the granting of a waiver.

Copies of Section 211 approvals, denials, and two year renewal reminders will be sent by DCAS to the hiring agency, the employee, and the appropriate pension system.

B. Waiver Application Process

A hiring agency should secure a Section 211 waiver before the effective date of employment. A new waiver is required when an agency seeks to change the civil service title of a Section 211 waiver recipient regardless of whether or not there is a change in salary or duties. A hiring agency applying for a Section 211 waiver should submit all required documentation to DCAS at least 45 days before the proposed effective employment date or waiver expiration date. DCAS will not review a Section 211 waiver request until the retiree has been separated from service for at least one year, unless extenuating circumstances demand a retiree's return to City service sooner. A waiver is granted for up to two years.

DCAS will not issue a retroactive Section 211 waiver. An untimely request for a new or extended waiver may make the retiree who begins work before a waiver is granted liable to reimburse funds to the pension system if the request is denied or approved after the retiree is appointed, or if the retiree continues to work after expiration of a previously granted waiver.

In order to obtain a Section 211 waiver for a new hire or to extend a waiver previously granted, the hiring agency must submit the following to DCAS through the NYCAPS Section 211 Waiver Module:

1. A [HC-0005 - Request for Approval to Employ Retiree Form](#) completed by the hiring agency and signed by both the appointing agency and the retiree.
2. Information explaining the duties to be performed, the agency's need for the position, the qualification requirements of the position, the retiree's unique qualifications to do the job, the justification for hiring the retiree, the impact failing to select the retiree would have on the project or agency, and why it is in the best interest of the City to hire the retiree.
3. A copy of the retiree's current resume. The retiree must be qualified to perform the duties of the position, and this fact is affirmed by the appointing agency signature on the HC-0005.
4. A copy of its detailed recruitment plan to fill such vacancy on a permanent basis. DCAS will review the sufficiency of the recruitment plan as part of the waiver approval process. An example of what to include in the recruitment plan is a training plan intended to eliminate the need to hire a retiree in the future. A detailed recruitment plan is not required to request an extension of a Section 211 waiver originally granted before October 7, 2008.
5. Certification that there is an urgent need for the retiree's services as a result of an unplanned, unpredictable, unexpected vacancy and sufficient time is not available to recruit a qualified individual and that such hiring shall be deemed as non-permanent rather than a final filling of such position; or
6. Proof that the prospective employer has undertaken extensive recruitment efforts and has determined that there are no available, qualified non-retirees for the position.

A hiring agency must fully explain the efforts it has made to find qualified, non-retired candidates to fill vacancies first, and show why it is essential to hire people who are already retired. Section 211 waiver approvals for competitive class positions will not be granted where there is a viable civil service list in existence. Once a list is established, a provisional appointee with a Section 211 waiver is subject to replacement from the list.

At a minimum, the employer must show that it has posted the position as a Citywide Job Vacancy Notice for 10 business days or more and published at least two external advertisements. The ads, which can be printed or electronic, should be recent (not older than 4 months), reach a broad audience (using, for example, an online job board), include the civil service and/or office title, contain the minimum qualification requirements for the title as stated in the official job specification, and list the preferred skills needed for the position.

The employer must also describe the candidate responses to the postings, including, in particular, the disposition of all resumes received in response to the posting. The submission must detail:

- the number of resumes received
- the number of applicants who did not meet the minimum qualification requirements for the title as listed in the job specification with a description of the missing qualification (e.g., 40 applicants lack law enforcement experience, 5 applicants lack a high school diploma)
- the number of applicants who met the minimum qualification requirements for the title but lack one or more of the preferred skills for the position
- the number of non-retirees who met the minimum qualification requirements (“qualified non-retirees”)
- the number of qualified retirees
- the number of non-retirees and retirees interviewed
- a detailed explanation as to why each qualified non-retiree was not selected (“not as qualified as selected candidate” is an inadequate explanation)

Here is a [211 Waiver Request Checklist of Required Items](#).

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Commissioner

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