

RETURN TO WORK CRITERIA

You cannot receive a pension from the State Employees' Pension Plan Fund during any month in which you are an employee as defined under the provisions of that Plan unless you are:

- 1) An official elected by popular vote at a regular State election
- 2) An official appointed by the Governor and confirmed by the State Senate
- 3) A casual/seasonal employee employed by the State of Delaware and works less than 30 hours per week or if 30 hours or more for a period not to exceed 12 months; or a temporary employee who is hired for a specific project or task for a finite period of time that will not exceed 12 months in duration. You may earn \$40,000 annually before pension benefit payments are reduced.
- 4) A substitute employee in a school who is compensated on a daily basis. You may earn \$40,000 annually before pension benefit payments are reduced.
- 5) A temporary justice of the peace appointed pursuant to §9211 of Title 10
- 6) A per diem employee of the legislature
- 7) A registration or election official or juror

IRS Guidelines

The IRS indicates the following guidelines must be followed in order to return to work with an employer from whom you are receiving a qualified pension plan benefit:

If under age 65 –

- Must have a bona fide separation after retirement (six months or greater).
- Must not have had a pre-arranged agreement to return to work with the State.

If over 65, a bona fide separation is not required.

If working as a contractor directly with a state agency, the retiree must submit a completed Direct Employment Form which incorporates the IRS 20 Factor Test to determine whether an individual qualifies as an employee or independent contractor. The Office of Pensions will issue a determination, based on IRS definitions, as to whether the individual is an employee or contractor. If the retiree is deemed an employee, then the employee must decide whether to continue working or continue to receive their pension benefits as he/she will be unable to do both.

If working for a contractor which has contracted its services to a state agency, the retiree must submit a completed Indirect Employment form which will place the responsibility of determining the retiree's status as a contractor on the three parties involved – the retiree, the contracting state agency and the hiring entity. The Office of Pensions will not issue a determination, but by submitting the form the parties involved are accepting responsibility for any claims, penalties, or fines that arise from the employment.

DISCLAIMER: In the case of conflict between this summary and the Plan, the Plan prevails.