

March 11, 2022

TO: All County Superintendents of Schools  
District Superintendents of Schools  
Charter School Administrators  
Community College Districts  
Other Employing Agencies

FROM: Cassandra Lichnock  
Chief Executive Officer

SUBJECT: Employer Directive 2022-04  
***Supersedes Employer Directive 2021-01***  
Executive Order N-12-21  
Executive Order N-3-22  
Executive Order N-4-22

## **PURPOSE**

This employer directive is intended to inform employer of Executive Order N-4-22 and how it impacts provisions of previously implemented Executive Orders N-3-22 and N-12-21.

## **SCOPE**

This directive contains information for county superintendents of schools, K-12 school districts, charter schools and community college districts that employ retired members of the Defined Benefit (DB) Program.

## **DISCUSSION**

On August 16, 2021, Governor Newsom issued **Executive Order N-12-21**, which, amongst other provisions, allows for a streamlined exemption process for the 180-calendar day separation-from-service requirement. This Executive Order waived the requirement that the governing body adopt a resolution authorizing a retired DB member to be exempt from the limitation under subdivision (a) of Education Code section 24214.5 and that the resolution be submitted to CalSTRS. **Executive Order N-4-22** terminates this streamlined exemption process effective February 25, 2022.

On January 11, 2022, Governor Newsom issued **Executive Order N-3-22**, which, amongst other provisions, allows school districts, county offices of education and charter schools temporary flexibility to hire substitutes and retired DB members during the state of emergency. This order is effective January 11, 2022, and applies to all compensation earned for the performance of retired member activities from July 1, 2021, to March 31, 2022.

On February 25, 2022, Governor Newsom issued **Executive Order N-4-22**, which, amongst other provisions, allows for the continuation of suspensions under Paragraphs 5 and 6 of Executive Order N-3-22 through the remainder of the 2021-22 school year for those that met requirements of those provisions prior to March 31, 2022.

Executive Order N-3-22 states in part:

1. The temporary flexibilities authorized through this Order shall apply to a school district, county office of education, or charter school only if the school district superintendent, county superintendent of schools, or charter school leader, or such officials' designee, makes a written finding, which shall be signed by the official or designee and retained and made available to any member of the public upon request, that temporary staffing flexibility will support the school district, county office of education, or charter school in maintaining in-person services for students despite staffing shortages caused by the Omicron-driven rise in COVID-19 cases.

The provisions of Executive Order N-3-22 are applicable to K-12 school districts, county offices of education and charter schools only if the employer makes a written finding, signed by the official or designee and retained and made available to any member of the public upon request, that temporary staffing flexibility will support the school district, county office of education or charter school in maintaining in-person services for students despite staffing shortages caused by the Omicron-driven rise in COVID-19 cases.

Executive Order N-3-22 does not apply to community college districts.

#### **TEMPORARY SUBSTITUTES**

Executive Order N-3-22 states in part:

2. For the purposes of providing emergency substitute teaching services as authorized by Title 5, California Code of Regulations section 80025(b), temporary certificates may be issued pursuant to Education Code section 44332(a) without regard to whether the recipient has a pending credential or permit application or has made the statement under oath required by that section, and any contrary requirements of section 44332(a) are hereby suspended through March 31, 2022. All applicants receiving temporary certificates pursuant to section 44332(a) must meet the remaining eligibility requirements in section 80025 and all requirements of Education Code section 44332.6.
3. The limitations in California Code of Regulations, Title 5, sections 80025.1(c) and 80025.3(a) and (b), as modified via Section 47 of Assembly Bill 167, Chapter 252, Statutes of 2021, on the duration for which substitute teachers can be assigned to a single general education assignment are extended to no more than 120 days through March 31, 2022.
4. The requirement under Education Code 46300 and any related statute or regulation that students be under the direct supervision of a certificated employee of a school district or county office of education for calculating average daily attendance for apportionment is

suspended for each day, or portion thereof, that a student teacher is assigned to a classroom without the supervision of a credentialed teacher through March 31, 2022.

These provisions of the Executive Order establish that K-12 school districts, county offices of education and charter schools can employ staff who acquire temporary certificates pursuant to Education Code section 44332(a) and meet the remaining eligibility requirements outlined above. K-12 school districts, county offices of education and charter schools will need to work with the Commission on Teacher Credentialing to ensure staff meet the proper requirements to be issued temporary certificates.

If an individual is hired according to these provisions and performs creditable service pursuant to Education Code section 22119.5, that individual should be treated like any other certificated employee who is performing creditable service and should be given the ability to permissively elect membership with CalSTRS (form ES 350), or the retirement system election (form ES 372) when applicable.

Please note if the individual hired according to these provisions who performs creditable service pursuant to Education Code section 22119.5 chooses not to permissively elect membership in the CalSTRS DB Program, their service should be reported to CalSTRS as non-member (Member Code 2), and their service should be monitored for mandatory membership thresholds.

#### **ANNUAL POSTRETIREMENT EARNINGS LIMIT**

**For employers that created the written finding per Paragraph 1 of Executive Order N-3-22, please follow the directions below:**

Executive Order N-3-22 states in part:

5. The post-retirement compensation limitations in subdivisions (d), (f), and (g) of Education Code section 24214 are suspended for compensation earned during the 2021-22 school year through March 31, 2022.

Executive Order N-4-22, Paragraph 16, subdivision b states:

b. Paragraph 5. Any compensation earned by a retired member during the 2021-22 school year pursuant to this provision prior to its termination shall not count toward the post-retirement compensation limits under Education Code section 24214, subdivisions (d), (f), and (g);

The annual postretirement earnings limit is suspended for those retired DB members who returned to work during the period of July 1, 2021, through March 31, 2022, in a K-12 school district, county office of education or charter school. Therefore, any retired DB member, regardless of age, can perform retired member activities and will have the annual postretirement earnings limit suspended for the entire 2021-22 school year, as long as they returned to work during the period of July 1, 2021, through March 31, 2022.

Retired DB members who initially return to retired member activities on or after April 1, 2022, will be subject to the annual postretirement earnings limit of \$48,428 for the 2021-22 school year.

As a reminder, the annualized rate of pay for retired member activities must not be less than the minimum, or exceed the maximum, paid by the employer to other employees performing comparable duties.

Because Executive Order N-3-22 does not apply to community college districts, the 2021-22 annual postretirement earnings limit applies to retired DB members performing retired member activities at a community college district.

### **180-CALENDAR DAY SEPARATION-FROM-SERVICE REQUIREMENT**

**For employers that created the written finding per Paragraph 1 of Executive Order N-3-22, please follow the directions below:**

Executive Order N-3-22 states in part:

6. For a retired member that has attained the normal retirement age at the time the compensation was earned, the post-retirement compensation limitations and procedural requirements in subdivisions (a) through (g) of Education Code section 24214.5 are suspended for compensation earned during the 2021-22 school year through March 31, 2022.

Executive Order N-4-22, Paragraph 16, subdivision c states:

c. Paragraph 6. Any retired member who meets normal retirement age and returned to service pursuant to this provision prior to its termination shall be able to remain in service through the end of the 2021-22 school year notwithstanding any limitation that would otherwise apply pursuant to Education Code section 24214.5, subdivisions (a) through (g);

The 180-calendar day separation-from-service requirement is suspended for retired DB members who have attained normal retirement age (60 years of age, or 62 years of age for a member subject to the California Public Employees' Pension Reform Act of 2013), for the 2021-22 school year, as long as they returned to work during the period of July 1, 2021, through March 31, 2022. Therefore, a retired DB member who has attained normal retirement age can be hired to perform retired member activities and earn compensation for that service immediately after retirement with no impact to their retirement benefit as long as they are returning to a K-12 school district, county office of education or charter school. The suspension of the separation-from-service requirement for these retired DB members will sunset June 30, 2022.

The following criteria no longer applies if the compensation is earned during the 2021-22 school year, as long as the retired DB member returned to work during the period of July 1, 2021, through March 31, 2022:

- The appointment is necessary to fill a critically needed position and must be filled before the retired DB member's 180-calendar day separation-from-service period has passed since the member's most recent retirement date.
- The termination of employment of the retired DB member with the employer must not be the basis for the need to acquire the services of the member.
- The retired DB member must not have received a retirement incentive or any financial inducement to retire from any public employer.
- The retired DB member must not begin performing retired member activities until CalSTRS receives all required documentation.

Due to the adjustments above, the submission of the SR1897 form is not required for this period through March 31, 2022, for retired DB members returning to work at a K-12 school district, county office of education or charter school.

If the retired DB member's 180-calendar day separation-from-service period extends into the 2022-23 school year and they would like to continue to be exempt from the separation-from-service requirement, you must obtain governing body approval and submit the SR1897 form along with the board resolution.

There is no exemption to the separation-from-service requirement for a retired DB member who has not attained normal retirement age, and subdivisions (a) and (h) of Education Code section 24214.5 remain in effect for these members.

Executive Order N-3-22 does not suspend any other Education Codes, including subdivision (h) of Education Code section 22714. This section requires CalSTRS to revoke the two years of service credit earned through the CalSTRS Retirement Incentive Program if the retired DB member returns to work within five years in any capacity with the same employer that offered the incentive.

**For employers not covered under Executive Order N-3-22, please follow the directions below:**

Executive Order N-3-22 does not apply to community college districts or those K-12 school districts, county offices of education or charter schools that did not create the written finding pursuant to Paragraph 1 of Executive Order N-3-22. Therefore, the 180-calendar day separation-from-service requirement applies to retired DB members returning to retired member activities with those employers.

Pursuant to Executive Order N-4-22, the streamlined process for separation-from-service requirement exemption requests under Executive Order N-12-21 is terminated. Effective February 25, 2022, the original process for separation-from-service requirement exemption

requests under Education Code section 24214.5 is effective. Employers are required to obtain governing body approval and also submit the board resolution with the SR1897 form to CalSTRS prior to the retired DB member beginning the retired member activities. Please refer to Employer Directive 2022-03 for this process.

#### **SUMMARY OF REQUIRED ACTIONS**

When hiring employees who have acquired temporary certificates:

- ✓ Provide those employees with the Permissive Election (ES 350) and Retirement System Election (ES 372), when applicable.
- ✓ Report service to CalSTRS using Member Code 1 or 2, and monitor for mandatory membership thresholds as necessary.

In accordance with Education Code section 22461, upon retaining the services of a retired DB member either as an employee of an employer, an employee of a third party or an independent contractor, including as a consultant, within the California public school system, the employer is required to:

- ✓ Notify the retired DB member of all earnings limits and the retirement incentive employment restrictions, if applicable.
- ✓ Maintain accurate records of the retired DB member's earnings.
- ✓ Report those earnings to the retired DB member and to CalSTRS monthly, using Member Code 2 and Assignment Code 61, regardless of the method of payment or the fund from which the payments were made. For community college districts and those employers that did not create the written finding pursuant to Paragraph 1 of Executive Order N-3-22, utilize the exemption process to the 180-day separation-from-service requirement period outlined in Employer Directive 2022-03.

CalSTRS will host an employer Question and Answer session on Executive Order N-4-22 on Thursday, March 17 from 1-2pm. Please email [EmployerTraining@CalSTRS.com](mailto:EmployerTraining@CalSTRS.com) to obtain your registration link.

For questions regarding how Executive Orders N-12-21, N-3-22 and N-4-22 apply to school employers and CalSTRS retired members, please contact us at [Postretirement@CalSTRS.com](mailto:Postretirement@CalSTRS.com)