



employee relations **BULLETIN**

January 6, 2022
(Revises ER Bulletin dated 12/3/2019)

**To: Heads of All City Departments (excluding DWP)
Departmental Personnel Directors**

Subject: 120-DAY EMPLOYMENT OF RETIREES PER CHARTER SECTION 1164(B)

In accordance with Charter Section 1164(b), retired members of the Los Angeles City Employees' Retirement System (LACERS) may be rehired for a period not to exceed 120 days in any fiscal year when the member's services are required for an emergency, to prevent a stoppage of public business, or when his or her special skills are needed to perform work of a limited duration.

To ensure continued compliance with Internal Revenue Code (IRC) regulations and City Charter requirements, as well as to maintain the tax qualified status of LACERS in accordance with updated tax counsel advice, this Bulletin serves to provide criteria and procedures for 120-day re-employment request approval. This Bulletin supersedes a previous Mayoral Memorandum dated June 24, 2010, which indicated that modifications and updates to 120-day employment policies would be handled by the Office of the City Administrative Officer (CAO).

Normal Retirement Age Rule

Before a retiree under the Normal Retirement Age (defined as follows) can be re-employed, there must be a clear, bona fide separation from service of at least 90 days from the date of retirement, and there must be a completed and signed certification by the Head of Department or designee that there was no pre-arrangement, prior to retirement, for the re-employment. A bona fide separation from service means a good faith and complete termination of the employment relationship with no pre-arranged agreement to continue providing services at a later date. The bona fide separation of 90 days may be increased in the future, based upon new State legislation or future Internal Revenue Service (IRS) rulings, if any.

Normal Retirement Age

This rule defines the "Normal Retirement Age," as that term is used in Treasury Regulation Section 1.401 (a)-1(b)(2), for Tier 1 and Tier 3 members. This rule applies for tax purposes, including for purposes of the in-service distribution rule exception set forth in IRC 401 (a)(36).

For members of Tier 1, the Normal Retirement Age shall be the earlier of:

- (1) Age fifty-five (55) with thirty (30) or more years of City service, or
- (2) Age sixty (60) with ten (10) or more years of continuous City service.

For members of Tier 3, the Normal Retirement Age shall be age sixty (60) with ten (10) or more years of service, including at least five (5) years of continuous City service.

These rules do not modify the age and service eligibility requirements or retirement factors for Tier 1 and Tier 3 members under the Los Angeles Administrative Code (LAAC), and do not create any vested right under California or Federal law including, but not limited to, the contracts clause of the California Constitution.

Retirees under the age of 59½ who do not meet the Normal Retirement Age and who do not have a bona fide separation from service may be subject to a Federal tax penalty on their retirement benefits.

A request for approval to rehire a retiree who has surpassed the age and years of service within the criteria previously listed may be approved without a separation period and without the requisite certification with no tax implications to LACERS or the retiree. However, the Normal Retirement Age must be confirmed by LACERS.

In addition to re-employment in accordance with Charter Section 1164(b), the above criteria also apply to the rehiring of retired City employees through personal services contracts and to requests for retirees to return to work through as-needed employment. In general, the hiring of retirees by other methods is similarly affected and will require approval by the Mayor and CAO to ensure adherence to applicable criteria.

Limitations of Rehiring Separation Incentive Program (SIP) Retirees

Under the SIP terms of agreement, a retiree who retired in either 2020 or 2021 under the SIP may return to City service only under Charter Section 1164 if approved by the Mayor. However, if returning to City service in any class within three years of retiring from the City, or receiving a personal services contract from any City agency, including proprietary departments, the SIP retiree must pay back either a portion or the entire amount of the cash incentive payment received, depending upon the time frame within which the SIP retiree returns to City service. The SIP retiree is required to repay the full amount of the incentive payment received if rehired within 12 months (i.e., 365 days) of his/her separation date; a pro-rated amount will be required to be repaid if rehired between 12 and 36 months (i.e., 366-1,095 days), based on the time elapsed.

The City is not obligated to accept the return of individuals willing to repay their SIP payment. The CAO may waive the repayment provision for employees whose services are needed to respond to a local emergency declared by the Mayor and approved by the City Council.

Submission of Requests to the Mayor

All requests to rehire retirees in accordance with Charter Section 1164(b) shall be submitted to the Mayor. The request must, at a minimum, contain: a) the name, date of birth, and date of retirement of the retiree; b) the required certification outlined in the previous Normal Retirement Age Rule section (if the retiree is below the Normal Retirement Age); c) the classification and pay grade the retired member will be rehired in; and d) a clear justification of the need for re-employment.

In accordance with Charter Section 1164(b), all requests for 120-day re-employment are only effective for one fiscal year and therefore expire on June 30 of each year, regardless of the number of days a retiree worked within the fiscal year. If a department desires to continue the re-employment of a retired member in a subsequent fiscal year, a new request must be submitted by the department and approved by the Mayor.

Additionally, the Charter requires that all retired members rehired in accordance with Section 1164(b) occupy a vacant position within the department in which they are rehired. This vacancy may include regular, resolution, substitute, and as-needed employment authority. Departments should work with the CAO prior to submitting a request to the Mayor to ensure an appropriate vacancy exists within which to place the retiree.

Terms of Employment of 120-day Appointments

Rehired retirees are limited to working 120 days within a fiscal year, which can be treated as an hourly limit of 960 hours. Departments must monitor the temporary employment of these individuals to ensure the 960 hour limit is not exceeded within a fiscal year.

Retirees may be rehired in any classification in which he or she had previously been employed, or, subject to the civil service provisions of the Charter, in any other position, and are not required to be rehired at the level at which they retired. If rehired into a Fair Labor Standards Act (FLSA) exempt (salaried) classification, the employee cannot be paid for more than 80 hours in a two-week pay period. If rehired into an FLSA non-exempt (hourly) classification, the employee will be subject to the FLSA provisions on overtime, if hours worked exceed 40 hours in a work week.

Additionally, retirees rehired in accordance with Charter Section 1164(b) are only entitled to be paid the base salary for the classification in which they are employed, as listed either in the applicable MOU salary appendix for a represented class, or in Schedule "A" of LAAC Section 4.61 for a non-represented classification. Such rehired retirees are not entitled to receive any additional compensation in the form of shift differentials, bonuses (in the LAAC or MOU articles/salary notes including those for possessing professional certifications),

assignment pay, uniform allowance, longevity pay, mileage reimbursement, travel expenses, car allowance, time off benefits (such as sick leave, vacation, holiday, or leave with pay), or any other additional flat-rate or premium level compensation. However, rehired retirees may be eligible for COVID-19 related benefits or compensation as required under federal, State, or local statutes.

Note that prior to employment, or continued employment, 120-day rehired retirees must comply with any vaccination requirements, such as Ordinance No. 187134, which addresses the COVID-19 vaccines.

In the event a payroll error occurs resulting in overpayment, all reasonable efforts must be made by the employing Department, with the assistance of the Office of the City Controller, to recover the overpayment. Departments should contact the City Attorney's Office for assistance in addressing these issues.

If you have any questions, please contact the CAO's Employee Relations Division at cao.erd@lacity.org.