

TITLE: POST-RETIREMENT EMPLOYMENT

I. POLICY

Hidalgo County requires all of its employees to participate in the Texas County & District Retirement System. This policy applies to retirees who seek reemployment with Hidalgo County.

II. PROCEDURE

- A. Hidalgo County can rehire retirees after a bona fide separation of employment without a suspension of their monthly annuity.
- B. A bona fide separation means a separation that is not based on sham, collusion, or subterfuge, and without a promise, agreement or understanding between employer and employee that the person would be rehired after retirement.
- C. A retiree who resumes employment with Hidalgo County must have had a break in service of at least three (3) full calendar months and must have a true and bona fide separation.
- D. Any Hidalgo County department or office considering a retiree should first consult with the Human Resources Department. Human Resources, together with the County Treasurer, the County Auditor, and a representative from the Office of Budget & Management will make the appropriate recommendations to the Commissioners Court regarding retirees.
- E. Any retiree who is rehired consistent with this policy will establish a new membership with TCDRS and will be considered to be a new member for the purposes of beneficiary determination and benefit selections.

Approved by: Commissioner's Court

Date: May 23, 2006

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Rehiring retirees and former employees

In order to avoid jeopardizing your plan's qualified, tax-deferred status, we strongly encourage you to carefully evaluate your human resource policies concerning rehiring retirees and former employees.

An in-service distribution is either a retirement benefit or an account withdrawal to an employee who is still actively employed with you. These kinds of distributions are impermissible under federal and state law. An in-service distribution invalidates the employee's retirement or withdrawal. If it is not corrected by the return of benefit payments or the withdrawn amount (by either the employee or the employer), then it could jeopardize your TCDRS retirement plan's qualified status. Losing your plan's qualified status could subject you and your employees to significant fees, penalties and additional taxes levied by the IRS.

Rehiring a retiree or former employee who has withdrawn his or her account is not an in-service distribution as long as the following two conditions are met:

1. **Bona fide separation in service:** There must be a true separation in service between the employer and the employee in which the employer/employee relationship is completely severed.
2. **One full calendar month separation in service:** Assuming a bona fide termination, the employee must be separated from employment for one full calendar month. For example, if an employee separates from employment on April 15, the earliest that person could be rehired with the same employer is June 1.

Keep in mind that a termination is not considered bona fide if there is an expectation, understanding or agreement that the termination is temporary or that the person will be rehired in the future. This applies even if the position that the employee will occupy:

- Is different from his or her current position
- Pays more or less than the current position
- Is in a different department
- Requires different hours (for example, going full time to part time, or vice versa)
- Is an independent contractor position that has the individual providing the same services they provided while an employee
- Is an elected position. Elected officials are considered employees of the county or district for purposes of participating in TCDRS.

These rules apply to employees rehired on a *pro re nata* (PRN) or "as needed" basis.

For more detailed guidance on developing hiring policies that prevent an in-service distribution, please contact your county attorney or district legal counsel. If you have additional questions, please feel free to contact TCDRS' legal staff at 800-823-7782.