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GOVERNOR



STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

October 1, 2010

TO: All State and County Personnel and Payroll Offices

FROM: Wesley K. Machida *Wesley K. Machida*
Administrator

SUBJECT: Act 179, SLH 2010 – Employment of Employees' Retirement System (ERS)
Retirants

We would like to provide you with information on the impact of Act 179. Act 179 is applicable to all State and County agencies and affects retirants employed by a State or County agency on or after January 1, 2011 (i.e., after December 31, 2010). This law incorporates and repeals Act 286, SLH 2006, and Act 156, SLH 2008.

New Law Change

Act 179 requires an ERS retirant employed by a State or County agency to have:

- (1) A six (6) consecutive calendar month break in State and County employment prior to the first day of employment if the retirant will be employed in a position that is excluded from ERS membership (i.e., part-time or short-term of less than 50% FTE, temporary of 3 months or 90 days or less, session employees of the Legislature, President and Chief Executive Officer of the Hawaii Tourism Authority, substitute teachers, etc.); **OR**
- (2) A twelve (12) consecutive calendar month break in State and County employment prior to the first day of employment if the retirant will be employed in a position identified as a labor shortage or difficult-to-fill position.

In addition, Act 179 prohibits the employment of a retirant if the employer agreed, prior to the retirant's retirement, to employ the retirant after retirement.

The six or twelve calendar month break could have occurred anytime after the retirant's retirement date. The State employers include, but are not limited to, the State executive branch, the University of Hawaii, the Hawaii Health Systems Corporation, the Department of



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Education, the Office of Hawaiian Affairs, the Judiciary, and the Legislative branch of the State. The County employers include the City and County of Honolulu, the County of Hawaii, the County of Kauai, and the County of Maui.

After complying with the requirement for a break in employment, and provided that there was no pre-retirement agreement for post-retirement employment, retirants returning to work in any of the above positions would not have their retirement (pension) or health benefits suspended. Also, the retirant would not earn any additional service credit nor contribute to the ERS annuity savings fund.

Act 179 does not prohibit the employment of retirants who are reenrolled as active ERS members when they return to State or County employment. When a retirant is reenrolled as an active ERS member, the individual's pension and other retirement benefits will be suspended until the individual again retires.

Impact

The purpose of Act 179 is to protect and preserve the tax exempt status of the ERS by providing remedies for the ERS against the employer and retirant if a retirant is employed in violation of Hawaii Revised Statutes Chapter 88 and the Internal Revenue Code of 1986.

If the ERS lost its tax-qualified status, tax deferral of member contributions and benefits would be lost – members would be taxed on their Contributory and Hybrid retirement contributions when made, and all members would be taxed on their total accrued benefits upon vesting, even though they have not retired and will not be paid any pension until they retire.

If the requirement for a six or twelve calendar month break in employment is not met, or if the prohibition against pre-retirement agreements for post-retirement employment is violated, the ERS will have the following remedies against the employer and the retirant:

- (1) The retirant is required to reimburse the ERS for any retirement allowance received by the retirant during the post-retirement employment period, plus 8% annual interest.
- (2) The retirant and the State or County employer are required to pay the employee and employer contributions for the period of employment, plus 8% annual interest.
- (3) The retirant and the State or County employer may be required to reimburse the ERS for administrative expenses incurred in responding to the violation.

This memo is only a summary of Act 179, SLH 2010. The ERS will be working with personnel offices of the State and County and providing more detailed information regarding this new law.

Attached are examples of the new law to provide guidance for your agency.

**EXAMPLES OF ACT 179, SLH 2010
(Effective January 1, 2011)**

Example #1

- December 31, 2009 Retired
- January 1, 2011 Hired 89-day position – pension not suspended

Summary:

Requirements for employment of a retirant met if there was no pre-retirement agreement for post-retirement employment. Retirant had a break from January 1, 2010 to December 31, 2010 (more than 6 consecutive months) prior to employment.

Example #2

- September 1, 2010 Retired
- November 1, 2010 Hired 89-day position until January 28, 2011 – pension not suspended
- January 28, 2011 Terminates the first 89-day hire employment
- February 1, 2011 Rehired for another 89-day after the 3-day break – pension suspended

Summary:

Requirements for employment of a retirant not met. Neither the employer nor the retirant is liable to the ERS for the 89-day position that commenced prior to January 1, 2011 (the effective date of Act 179).

However, the retirant's pension must be suspended if the retirant is hired for another 89-day position beginning on or after January 1, 2011, because Act 179 would be applicable to that employment, and the retirant did not have a 6 consecutive month break in employment after retiring.

Example #3

- October 1, 2010 Retired
- December 1, 2010 Hired 89-day position – pension not suspended
- February 28, 2011 Terminates first 89-day hire employment
- September 1, 2011 Hired for another 89-day after a 6 consecutive month break – pension not suspended

Summary:

Requirements for employment of a retirant met if there was no agreement prior to the termination of the December 1, 2010 – February 28, 2011 employment. Neither the employer nor the retirant is liable to the ERS for the employment that began prior to January 1, 2011 (the effective date of Act 179). No suspension of benefits for the 89-day position that began after the 6 consecutive month (March, April, May, June, July and August) break in employment, provided that, before the break began, there was no agreement that the retirant would be hired after the break.

Example #4

- February 1, 2011 Retired
- August 1, 2011 Hired in a non-ERS membership position – pension not suspended

Summary:

Requirements for employment of a retirant met if there was no pre-retirement agreement for the employment beginning on August 1, 2011. The retirant was not employed for 6 consecutive months (February, March, April, May, June, and July).

Example #5

- July 1, 2008 Retired
- March 1, 2009 Hired – Difficult-to-fill position until June 30, 2009 – pension not suspended
- July 1, 2009 Hired – Difficult-to-fill position until December 28, 2009 – pension not suspended
- January 2, 2010 Hired – Difficult-to-fill position until June 30, 2010 – pension not suspended
- July 6, 2010 Hired – Difficult-to-fill position until March 31, 2011 – pension not suspended

Summary:

Neither the employer nor the retirant is liable to the ERS for the employment that began prior to January 1, 2011 (the effective date of Act 179) – the retirant can continue to work until March 31, 2011 without suspension of the retirant's pension.

However, after March 31, 2011, the retirant must wait 12 consecutive months to be hired again in a difficult-to-fill or labor shortage position without suspension of the retirant's pension.

If the retirant is employed in a 50% or more FTE position prior to October 1, 2011, or if there was an agreement prior to the termination of the July 6, 2010 to March 31, 2011 employment that the retirant would be hired again, the retirant must be reenrolled in the ERS and the retirant's pension will be suspended.