



## RETIREMENT SERVICES DIVISION MEMORANDUM

JUNE 28, 2023

### TO ALL MUNICIPALITIES PARTICIPATING IN THE MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

**ATTENTION: CMERS Participating Entities**

**SUBJECT: Reemployed Retirees**

#### I. Introduction

The Connecticut Municipal Employees Retirement System (“**CMERS**”) has recently changed the rules that apply to “reemployed retirees”—*i.e.*, individuals who accept employment with a CMERS municipality while they are eligible to receive a retirement pension from CMERS. The changes were created by an amendment to Section 7-438 of the Connecticut General Statutes and a new regulation issued by the State Employees Retirement Commission.

The new rules permit *some* reemployed retirees to receive their pensions while working as permanent and/or full-time employees of a participating municipality. But that permission is subject to several important limits and exceptions. This memorandum will explain what those limits and exceptions are and why they have been imposed.

#### II. Basic Features of CMERS and CMERS Reemployment

##### A. Participation in CMERS

The Connecticut Municipal Employees Retirement System (“**CMERS**”) is a government retirement plan that provides retirement benefits to certain employees of “municipalities” within the State of Connecticut.<sup>1</sup> Each municipality chooses whether to enroll its employees by accepting the terms of Chapter 113 of the Connecticut General Statutes.

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<sup>1</sup> For purposes of CMERS, a “municipality” may be any of several types of government employer, including a town, a city, a borough, a school district, a regional school district, a taxing district, a fire district, a district department of health, a probate district, a housing authority, a regional workforce development board, a regional emergency telecommunications center, a tourism district, a flood commission, an authority established by special act or a regional council of governments.

A municipality that accepts the terms of Chapter 113 is **not** required to enroll **all** of its employees in CMERS (although it is free to do so). Each municipality may accept those terms as to one or more “**departments.**” Only those employees of the municipalities who work within the designated department or departments are covered by CMERS. However, **all** employees within a designated department must be enrolled in the plan.

A municipality that accepts the terms of Chapter 113 for **any** of its employees—even if some of its departments have **not** been designated—is known as a “**Participating Municipality.**”

## **B. CMERS is a “Qualified Plan”**

CMERS is a “qualified” retirement plan for purposes of federal tax law. Because CMERS is a qualified plan, Participating Municipalities may allow their employees to make their contributions to the plan on a pre-tax basis. That is, employees pay no income tax during their active employment on the amount of salary they contribute to the plan.

This is an important benefit. To maintain that benefit, CMERS must comply with the rules for qualified plans that have been established under the regulations of the federal Internal Revenue Service.

## **C. Past Rules for Reemployed Retirees**

CMERS members who satisfy certain age and service requirements are eligible to receive a lifetime retirement income after the termination of their service with a Participating Municipality. A “**Reemployed Retiree**” is a person who (i) satisfies the age and service requirements for a CMERS pension; (ii) terminates his or her municipal employment; and then (iii) accepts new employment with either the same municipality or another Participating Municipality.

Until recently, the law provided that a Reemployed Retiree could not receive his or her CMERS pension during the period of his or her new employment by a Participating Municipality, **unless** the employee worked on a temporary and/or part-time basis. This was true, even if the Reemployed Retiree was now working in a department that had not been designated for participation in CMERS.

## **II. New Rules for Reemployed Retirees**

Effective as of October 1, 2022, the Connecticut General Assembly modified the rules governing Reemployed Retirees by amending Section 7-438 of the Connecticut General Statutes. After the amendments were adopted, the State Employees Retirement Commission issued a new regulation regarding Reemployed Retirees.<sup>2</sup> The purpose of the new regulation is to clarify that the amended statute will be enforced in a way that complies with federal rules governing qualified retirement plans.

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<sup>2</sup> Reg. Conn. State Agencies § 7-438-1.

The new rules apply to all Reemployed Retirees, but special conditions apply to any Reemployed Retiree who:

- Retired before age 55 under Conn. Gen. Stat. § 7-431 (Early Retirement);
- Retired before age 55 under Conn. Gen. Stat. § 7-432 (Disability Retirement);
- Is reemployed in a designated department of a Participating Municipality—*i.e.*, a department whose employees are covered by CMERS; or
- Is a retired police officer or firefighter who is reemployed in a public safety position in a school district or regional school district.

#### **A. Part-Time and/or Temporary Employment**

A retired employee who accepts employment by a Participating Municipality for (i) fewer than 20 hours per week or (ii) fewer than 91 working days in any calendar year may continue to receive his or her CMERS pension while so employed. The employee will not receive any additional service credit in CMERS during the period in which he or she receives his or her CMERS pension.

These rules applied before the recent amendments to Section 7-438, and they have not been changed.

#### **B. Full-Time and/or Permanent Employment**

##### **1. The General Rule**

Subject to the exceptions explained below, a retired employee who accepts full-time and/or permanent employment by a Participating Municipality may continue to receive his or her CMERS pension while so employed, *if* he or she satisfies two conditions:

- the employee works in a **department** that has **not** been designated for participation in CMERS, **and**
- the employee does not otherwise participate in CMERS while so employed.

The employee will not receive any additional service credit in CMERS during the period in which he or she receives his or her CMERS pension.

##### **2. Exceptions to the General Rule**

The following exceptions apply to this general rule:

- If the Reemployed Retiree retired under Conn. Gen. Stat. § 7-431 (Early Retirement) before reaching age 55, then he or she **may not** receive his or her CMERS pension while reemployed, **unless and until** he or she has reached the age of 59½.

- If the Reemployed Retiree retired under Conn. Gen. Stat. § 7-432 (Disability Retirement) before reaching age 55, then he or she **may not** receive his or her CMERS pension while reemployed, **unless and until** he or she has reached the age of 59½.
- If the Reemployed Retiree is employed on a permanent or full-time basis in a **department that has been designated** for participation in CMERS, then he or she **may not** receive his or her CMERS pension while reemployed. Instead, the Reemployed Retiree will receive additional service credit in CMERS for the period of his or her reemployment.
- If the Reemployed Retiree (i) was a uniformed member of a paid municipal fire department or (ii) a regular member of a paid municipal police department, and if the employee accepts employment in a public safety position from any school district or regional school district, then the Reemployed Retiree **may** receive his or her CMERS pension while so employed, even if the school district is a Participating Municipality. The employee will not receive any additional service credit in CMERS during the period in which he or she receives his or her CMERS pension.

### III. Why Does the New Rule Have Exceptions?

The new rules concerning permanent and/or full-time reemployment of CMERS retirees are necessary to ensure that the plan complies with two rules that govern qualified retirement plans under federal tax law. The two rules are (i) a prohibition against “in-service distributions” and (ii) a prohibition against “second elections.”

#### A. In-Service Distributions

As a general rule, federal law provides that a qualified retirement plan may not pay retirement benefits to members who are “not separated from employment.”<sup>3</sup> Because CMERS is a multi-employer retirement plan, all Participating Municipalities are considered to be a single employer for purposes of this rule. Therefore, a Reemployed Retiree is considered to have “not separated from employment.”

This prohibition against “in-service distributions” has an exception for employees who have either (i) reached the age of 59½ or (ii) retired after having satisfied requirements for a “normal retirement” under the terms of their retirement plan.<sup>4</sup>

In CMERS, a member satisfies the requirements for “normal retirement” if he or she retires at age 55, with either five years of continuous service or fifteen years of aggregate service.<sup>5</sup>

If a member of CMERS retired before reaching the age of 55—either because the member elected an Early Retirement under Conn. Gen. Stat. § 7-431, or because he or she began a Disability

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<sup>3</sup> 26 U.S.C. § 401(a)(36).

<sup>4</sup> 72 Fed. Reg. 28604.

<sup>5</sup> Conn. Gen. Stat. § 7-428.

Retirement under Conn. Gen. Stat. § 7-432—then the member has not satisfied the age requirement for a “normal retirement.” If the member is employed by a Participating Municipality, therefore, any payments of retirement benefits before the member reaches age 59½ would constitute a prohibited “in-service distribution.”

## B. Second Elections

As a general rule, a qualified retirement plan may not give its members a choice as to whether or not the member will participate in the plan. The only exception is one that allows the member to make “a one-time irrevocable election made no later than the employee’s first becoming eligible under the plan.”<sup>6</sup> Because a Reemployed Retiree has previously “becom[e] eligible” for participation in CMERS, he or she may not be offered the option of waiving *further* participation when he or she accepts reemployment. This would constitute an impermissible “second election.”

If a Participating Municipality has designated a department for participation in CMERS, then **all** employees of that department must be enrolled in the plan. If a retired member of CMERS accepts employment in such a department, the “second election” rule prohibits the municipality from offering the Reemployed Retiree the option of waiving participation.

Under the new rule governing Reemployed Retirees, a Reemployed Retiree who accepts employment from a Participating Municipality on a permanent and/or full-time basis may continue to receive his or her pension if he or she “does not participate in [CMERS] during the period of his or her reemployment.”<sup>7</sup> But if the Reemployed Retiree is employed in a department whose employees are covered by CMERS, then the retiree may not be permitted to waive participation. Therefore, the “second election” rule requires that the new rule apply only to retirees who are reemployed in a department whose employees **are not** covered by CMERS.

Very truly yours,

By:



John Herrington, Director  
Retirement Services Division

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<sup>6</sup> 26 CFR 1.401(k)-1(a)(3)(v).

<sup>7</sup> Conn. Gen. Stat. § 7-438(b).