



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**

San Mateo County Employees' Retirement Association  
(*SamCERA*)

**DATE:** March 10, 2009  
**BOARD MEETING DATE:** March 31, 2009  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** David Bailey, Chief Executive Officer, *SamCERA*

**SUBJECT:** Regulations of the Board of Retirement regarding Post-Retirement Employment and Establishment of Normal Retirement Ages

**Recommendation**

Adopt a Resolution approving Board of Retirement Regulations sections 4.12, 4.13 and 4.14 Regarding Post-Retirement Employment and Establishment Normal Retirement Ages.

**Background**

The Board of Retirement has approved changes to its Regulations to establish Post-Retirement Employment regulations and Normal Retirement Ages. Government Code section 31525 requires the Board of Supervisors to approve the Regulations of the Board of Retirement for them to become effective.

IRS regulations and state law include three requirements that must be met (with some exceptions, see below) for retirees to return to work as Extra Help employees:

1. The IRS requires a "bona fide" break in service between when an employee retires and when they come back to work. The IRS has not defined a specific time period as "bona fide." However, after consulting County Counsel, tax counsel, and surveying other counties that also operate under California's 37 Act retirement law, we learned that a break in service of 90 days is most often assumed to meet the IRS standard.

2. A further IRS requirement is that there cannot be any prearrangement for the retiree to come back to work, either verbally or in writing. Arrangements for a retiree to return to work cannot be made until some period of time after the retirement has occurred.

3. For San Mateo County and all other counties covered by the 1937 Act, there is a limit of 960 hours per year that a retiree can work for the County as Extra Help. San Mateo County and *SamCERA* have had procedures in place since 2005 to make sure we are in compliance with this law.

#### Exceptions:

- For individuals who retire at or after reaching "Normal Retirement Age" the break in service and the prearrangement requirements do not apply. (Normal Retirement Age is an IRS phrase which the IRS has defined as an age that cannot be earlier than the age that is "reasonably representative of a typical retirement age for the covered workforce." The Board of Retirement has set the Normal Retirement Age for a San Mateo County safety employee at 53 and for a general service employee at 60. In order to determine which retirees are exempt from the post-retirement rules and which are not, these ages should be approved by the Board of Supervisors for inclusion in the Regulations of the Board of Retirement. Normal Retirement Age has other uses. For instance, it is also used to determine eligibility for a federal tax exclusion for safety retirees.)
- The limit of 960 hours per fiscal year for a retired Extra Help employee applies to all *SamCERA* retirees regardless of the age at which they retired.
- If a retiree provides services as an independent contractor and not as Extra Help, all three restrictions above do not apply. However, the retiree must actually provide services in the manner of an independent contractor not in the manner of an employee. County Administrative Memo C-4 sets forth guidelines for determining independent contractor status.

#### **Discussion**

The regulations presented for your approval reflect that Internal Revenue Code and state law set forth requirements that must be met in order to allow *SamCERA* retirees to return to work as Extra Help for the County (or any other employer whose employees are members of *SamCERA*). They require a break in service of 90 days. Because some members who retire above certain ages will be exempt from these requirements, the regulations also set forth Normal Retirement Ages.

#### **Fiscal Impact**

None.