



TEACHERS' RETIREMENT SYSTEM

of the State of Kentucky

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MEMORANDUM

TO: University Human Resources Officers Pd/F

FROM: Mark E. Whelan, CPA *MEW*
Chief Financial Officer

DATE: September 27, 2019

SUBJECT: Federal tax law compliance/postretirement employment

TRS is a qualified plan under Section 401(a) et seq. of the Internal Revenue Code (IRC). As a qualified plan, members enjoy the valuable tax advantage of making retirement contributions on a tax-deferred basis. Outside tax counsel has informed TRS that, in order to ensure compliance with the IRC, changes need to be made to the current conditions under which retiring members may return to work for TRS-participating employers. These changes help ensure members experience a bona fide retirement before returning to work and have been included in prior TRS housekeeping legislation. Although this legislation has not passed, TRS has discussed the provisions with university representatives on several occasions. Additionally, TRS already has begun consulting university members considering retiring that this change is coming.

Given the importance of IRC compliance, the important benefit it provides to TRS members and the potential federal penalties for members who do not experience a bona fide retirement prior to returning to work, TRS now is proposing these changes by administrative regulation to comply with a statutory duty to remove conflicts with federal law. This administrative regulation has been submitted for approval by the legislature and likely will become effective for all retirements beginning January 1, 2020, and thereafter.

The new provisions are as follows:

- Breaks in service between retirement and reemployment will be required of all employers, including universities.
- A three-month break in service is required if returning to work for the same employer part-time or a different employer full-time. A 12-month break is required if returning to the same employer full-time.
- The breaks in service will start from the date of retirement (not the last day worked).
- Universities no longer will be permitted to use their current programs that allow for a reduced workload immediately after retirement without a break in service.

- Retired members returning to work and TRS employers who hire them must both sign a statement that there was no prearranged agreement prior to retirement for the retiring member to return to work for the employer (this applies even with employers from which the retired member did not retire, e.g. from one university to another).

I appreciate your assistance in ensuring compliance with federal tax law. If you have any questions at all, please contact me.