

North Carolina State Treasurer
Retirement Systems Division
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REEMPLOYMENT Q & A's for RETIRING LGERS MEMBERS

The answers provided in this document pertain to members of the Local Governmental Employee's Retirement System (LGERS) and are based on current law. The North Carolina Department of the State Treasurer will keep members informed of changes in the existing law.

How does North Carolina law define “retirement”?

For LGERS members, “retirement” is defined as the “withdrawal from active service” with a monthly retirement allowance.

During the month my retirement becomes effective, may I return to work?

That depends on whether you go back to work for an employer covered by LGERS.

You *cannot* perform any work for an LGERS employer at *any* time during the month you retire. If you were to work for an LGERS employer, your retirement would become void. It does not matter, under North Carolina law, whether you work for your prior LGERS employer or a different LGERS employer.

However, you *may* go back to work for a non-LGERS employer during the month you retire, provided you still perform *no* work during that month for an LGERS employer. This concept is discussed in more detail below, in connection with temporary employment agencies, LLCs and other private business entities.

May I return to work following the month during which my retirement becomes effective?

Yes. You may go back to work – for either an LGERS or a non-LGERS employer – following the month during which your retirement becomes effective.

Do the same rules apply, whether I return to work for an LGERS or non-LGERS employer, following the month of my effective retirement date?

No. Different rules apply. Various general guidelines are explained below.

What happens to my LGERS retirement benefits if I go back to work after my retirement for a non-LGERS employer?

The answer to this question depends on whether your *services* are provided only to your non-LGERS employer or whether your *services* are being provided to an LGERS employer, regardless of who technically hires or pays you. If your services are provided only to a non-LGERS employer, your LGERS retirement is not affected.

In the latter situation, however, the answer becomes a great deal more complicated, and each case must be evaluated on a case-by-case basis.

If I provide services to an LGERS employer following my retirement, how does the Retirement System decide whether my earnings are subject to the 50% earnings limitation, as opposed to deciding that I have been “restored” to LGERS employment?

You will be considered to be “restored” to LGERS employment, notwithstanding your retirement, when your services to an LGERS employer constitute “regular” employment. Under the statutes and regulations, “regular” employment with an LGERS employer is defined as having duties requiring not less than 1,000 hours of service in a regular (non-temporary, non-interim) position on an annual basis. If you are working 1,000 hours or more, on an annual basis, in a “regular” position, you will be considered “restored” to employment.

If, on the other hand, your duties for an LGERS employer require less than 1,000 hours of annual service – whether called part-time, temporary, interim or on a fee-for-service basis – your earnings will be subject to the 50% earnings cap, or \$ 26,960 as of January 1, 2007, whichever is greater.

Will my LGERS retirement be affected if I work after retirement for a temporary employment agency?

This question involves three potential scenarios, for which there are three different answers:

(1) Where a temp agency assigns you to provide services *only* to non-LGERS employers, your retirement benefits will not be affected.

(2) Where you signed up with a temp agency because you or an LGERS employer *intended* for you to be hired, through the temp agency, to provide your services to an LGERS employer, one of two possible results will occur.

At a minimum, your earnings from any LGERS employer – even though nominally paid to you by the temp agency, upon its receipt of payment from the LGERS employer – would be subject to the earnings limitation.

Beyond that possibility, however, if you are “regularly employed” in the service of that LGERS employer, i.e., your assigned duties require not less than 1,000 hours of service in a regular non-temporary, non-interim position on an annual basis, you could be

considered “restored” to LGERS service. The effects of restoration to service as an employee are (a) cessation of your monthly LGERS retirement benefits; and (b) mandatory re-enrollment as a member in LGERS.

(3) Finally, if your situation does not fall squarely within the first or second scenarios described above, you should contact the Retirement System for further guidance. The System has made Mr. Garry Austin, available at 919-508-5376 or garry.austin@nctreasurer.com, the specific contact for these purposes.

In such other cases, the answer will most likely depend on a number of factors. One important factor is whether the person or company to whom or to which you are providing services has the right to control your work (as to how you do the work and what your job expectations are) or whether the business *through* which you are so employed has such rights.

Will my LGERS retirement be affected if I form an LLC (or some other business) and work after retirement for that business?

Your LGERS retirement benefits will not be affected if you and your LLC, or other business, provide no services to an LGERS employer.

However, your retirement benefits may be affected if, through such business, *you* provide services to an LGERS employer. Just as with the temp agency question above, depending on the actual facts, your actual performance of services for an LGERS employer may be of such dimension and scope that you will be considered “restored” to service as an employee, leading to the cessation of your retirement benefits and re-enrollment as an LGERS member. Alternatively, your earnings (although through the business) based on your performing services to an LGERS employer may be counted against the earnings cap.

Without careful study of all the facts and circumstances of your particular situation, the System can reach no conclusive determination. It will always be best for you to ask the System how it would treat a proposed working situation, prior to your doing such work.

If my post-retirement earnings are subject to the earnings cap, what happens if I exceed the statutory limitation to 50% of my prior earnings (adjusted by the CPI) or \$ 26,960, whichever is greater?

Should you exceed the cap, your monthly benefits will be suspended as of the first of the month following the month in which you exceed the cap. That suspension will remain in effect for the remainder of that calendar year. Your retirement benefits would then be reinstated as of January 1 of the next calendar year.

Retired members should pay special attention to this provision. If a retiree happens to exceed the annual earnable allowance in the month the December, the statute

presently requires that retirement benefits be suspended in the following month — January – and remain suspended for that entire *following* calendar year.

What should I do to get more information about something that I am doing in retirement, or plan to do, about which I still have questions?

The Retirement System is available to answer your questions on these topics. The System has made Mr. Garry Austin, available at 919-508-5376 or garry.austin@nctreasurer.com, the specific contact for these purposes. Your human resources staff, as well as the local and municipal governmental associations, are also useful resources regarding retirement issues.