

# Post-Retirement Employment Restrictions

Public Employees' Retirement System (PERS), Teachers' Pension and Annuity Fund (TPAF), Police and Firemen's Retirement System (PFRS), State Police Retirement System (SPRS), and Judicial Retirement System (JRS)

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If you are considering working after retirement, you should be aware of the restrictions imposed by laws and regulations governing post-retirement employment. It is your responsibility to inform your prospective employer that you are receiving retirement benefits from a New Jersey public retirement system, and to understand the impact employment will have on those retirement benefits. In some instances, your retirement benefits may be suspended or even cancelled entirely, and if this occurs, **you will be responsible for the repayment of any benefits you were not entitled to receive.** You may also be required to re-enroll in your former retirement system or a different retirement system, and make pension contributions into that system.

The Division of Pensions and Benefits and the Boards of Trustees of the various retirement systems have a responsibility to preserve the fiscal integrity of the retirement systems and to guard them against abuse. Opportunities for retired employees to resume public employment while continuing to collect retirement benefits could be viewed in certain circumstances as abusive.

This fact sheet provides general information concerning employment restrictions for retired members of the New Jersey defined benefit retirement systems (PERS, TPAF, PFRS, SPRS and JRS). It is not intended to address every situation. You will be responsible for the refund of overpaid benefits and the payment of pension contributions based on the violation of the law. Your prospective employer should be able to tell you if the employment you are considering would not be permissible due to the restrictions imposed by laws and regulations governing post-retirement public employment in New Jersey. However, if there is any doubt, you should have the prospective employer contact the Division of Pensions and Benefits prior to your accepting public employment after retirement. If you have additional questions regarding the content of this publication, contact the Division of Pensions and Benefits prior to accepting employment. Failure to understand these restrictions may result in suspension and repayment of your retirement benefits, and payment of pension contributions.

Your retirement benefits are governed by New Jersey statutes as well as the Internal Revenue Code (IRC). The PERS, TPAF, PFRS, SPRS, and JRS are established as qualified governmental defined benefit plans in accordance with IRC Sections 401(a) and 414(d). New Jersey State-administered retirement systems generally do not permit the payment of retirement benefits without a complete severance from your employer. In order to preserve the qualified status of these plans and to protect retirees from a 10% early distribution tax penalty on their monthly pensions, the Division of Pensions and Benefits was required to adopt and to enforce regulations to ensure compliance with the IRC requirements.

If you want to supplement your retirement income after you retire, employment with a private company, the federal government, or another state will not affect your right to receive your New Jersey retirement benefits with the following exceptions:

- Retirees who are receiving a disability retirement allowance from either the PERS or TPAF may have their retirement allowance adjusted if they have earnings from any occupation or employment (public

or non-public) after retirement (see also, “Special Provisions for Disability Retirees” on page 7).<sup>1</sup>

- Members of the JRS who are collecting JRS retirement benefits are restricted from the practice of law before the courts of this State.<sup>2</sup>

### **RETURN TO WORK WITH YOUR FORMER EMPLOYER**

If you are considering returning to work with your former employer, you must first determine if you have already met the requirements of a “bona fide severance of employment” as defined under N.J.A.C. 17:1-17.14(a)2. “Bona fide severance from employment” means there was a complete termination of the employer/employee relationship for a period of at least 180 days from the date of your retirement.<sup>3</sup> The following does not qualify as a complete severance of your employment relationship with your former employer if it occurs within the 180-day period:

- re-employment in a part-time position;
- re-employment in a position that is covered by a different retirement system;
- a change in title;
- re-employment as a contract employee, a leased employee, or an independent contractor; or
- termination of employment with a pre-arranged agreement for re-employment.<sup>4</sup>

Re-employment by a different unit of the same public employer within 180 days of retirement, whether in a position covered by the same retirement system or a different retirement system, is considered to be employment by the same employer.

- Example 1 – a State employee retires and returns to work as a full- or part-time employee or independent contractor at any State agency, including a State university, within 180 days of the retirement date. A bona fide severance from employment has not occurred.
- Example 2 – a TPAF member retires from a school district and returns as a part-time teacher in the same district within 180 days following retirement. A bona fide severance from employment has not occurred.

Further, if an employee holds more than one position with the employer, he or she must separate for a period of 180 days from all employment in order to retire, even if the positions are covered by different retirement systems, or the second position is not subject to pension contributions.

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<sup>1</sup>Please see Fact Sheet #15 for more information on earnings restrictions for PERS/TPAF disability retirees, conditions for PERS/TPAF re-enrollment, and the required steps disability retirees must follow before returning to public employment. Fact Sheets #16 and #39 cover re-enrollment provisions for PFRS and SPRS disability retirees.

<sup>2</sup>Contact the Administrative Office of the Courts if you require additional information regarding this restriction.

<sup>3</sup>Employees that work a 10-month school year and retire on July 1 or August 1, must count the 180-day severance of employment from the start of the following normal school year in September.

<sup>4</sup>The IRS does not consider a pre-arranged return to public employment to be a bona fide severance from employment no matter how long the break in service. If you and your employer made an arrangement prior to your retirement to return to employment in any capacity, at any future time, including as a volunteer — regardless whether the position is covered by the former retirement system — your employment relationship will not be completely severed and your retirement will be considered non-bona fide, or invalid.

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- Example 3 – A municipal fireman, enrolled in PFRS, also works in a PERS position for the same municipality. This individual must terminate from both positions in order to qualify for retirement benefits from the PFRS. The individual must be separated from both positions for at least 180 days prior to any consideration of return to employment in the non-PFRS position (including the previously-held PERS position).
- Example 4 – A building inspector enrolled in the PERS works part-time for several municipalities. This individual must terminate from all PERS-eligible positions in order to qualify for retirement benefits from the PERS (including any additional positions acquired after May 21, 2010, for which he or she may not currently be PERS-eligible). The individual must be separated from all positions for at least 180 days after retirement prior to any consideration of return to employment with any of these municipalities.

**Volunteer Service**

It remains the policy of the State to encourage volunteering for community service. The “bona fide severance of employment” requirement, however, does raise significant questions regarding eligibility to provide service to a former employer as a volunteer, i.e. without compensation for service. A “bona fide severance of employment” for a member to be eligible for retirement benefits is required by the IRS to maintain the tax-qualified status of the pension plans. Failure to have plan requirements for a “bona fide severance of employment”, or failure to apply those plan provisions uniformly once they are in place, could result in the pension plans losing their tax-qualified status. In addition, the “bona fide severance of employment” requirement has increased concerns regarding potential consequences to retirees providing volunteer services if this requirement is not satisfied (please refer to the following section “Consequences of Returning to Work with your Former Employer within 180 Days of Retirement”).

The IRS guidance on “bona fide severance of employment” requires a complete termination of the employment relationship. The cessation of compensation alone, where services continue to be provided as a “volunteer,” does not automatically satisfy this requirement. Therefore, if volunteer service (a) is rendered by a retired member to the former employer during the 180-day period and (b) that service satisfies the IRS definition of employment, then a “bona fide severance of employment” has not occurred.

This rule applies where the volunteer service continued or undertaken by the retired member within the 180-day period is for the same employer which the retired member worked for before retirement. A retiree who seeks to become a volunteer must ascertain whether the volunteer services are being provided to the same employer from whom he retired or to a different entity. For example, many volunteer fire companies and rescue squads are organized separately from the municipal government as non-profit entities, perhaps with a different federal ID number. It is likely that such non-profit entities and the municipal government would not be considered the same employer.

In cases where the volunteer services are to be provided to the same employer, an issue also arises whether the volunteer services constitute “employment” under the IRS rules. There are a number of factors which must be considered in determining whether or not “employment” exists for purposes of the IRS. The retired member should consult with the employer’s personnel office regarding whether these factors lead to a determination of “employment”.

Retirees must also keep in mind that volunteer work must be performed without promise or expectation of compensation. If volunteering today provides a benefit such as helping to secure a paid position in the future, that could be considered compensation.

If you return to employment as a volunteer with your former employer within 180 days of retirement, your severance will not be considered bona fide.

**Consequences of Returning to Work with your Former Employer within 180 Days of Retirement**

If you return to service with your former employer prior to satisfying the requirements of a bona fide severance from employment, you will be required to repay all retirement benefits received. You may be required to re-enroll in the same or a different retirement system as of the date of re-employment. In the event you are required to participate in the same retirement system or another system, pension contributions will be deducted from your salary retroactive to the date of enrollment through the date of termination of employment. If this occurs, your retirement allowance may be suspended until you retire from employment and re-apply for retirement benefits.

**If you return to service with your former employer after satisfying the 180-day requirements** of a bona fide severance from employment, your employer may be required to re-enroll you if your position qualifies for enrollment in your former retirement system. If this occurs, your retirement allowance will be suspended until you retire from employment and re-apply for retirement benefits. (Please see page 7 for additional information concerning the consequences of re-enrollment.) If your new position does not qualify for participation in your former retirement system, you will continue to receive your retirement benefits, but you will not be eligible to participate in any other retirement system which would normally apply to your new employment.

**SPECIAL PROVISIONS RELATED TO BONA FIDE SEVERANCE OF EMPLOYMENT****Age-Related Mandatory Retirement in SPRS, PFRS and JRS**

The 180-day requirement does not apply to individuals who were required to retire under the age-related mandatory retirement provisions of the pension statutes relative to PFRS, SPRS, or JRS. In these situations, the age-related mandatory retirement is considered a “bona fide severance from employment.”

**Education Employees – Critical Need Employees**

New Jersey statutes provide an exemption from pension re-enrollment for certain retirees of the TPAF or PERS who are certificated superintendents or certificated administrators and who are hired by the Department of Education or a local board of education in a position of critical need. However, termination of employment with a pre-arranged agreement to return to a position of critical need will not be considered a bona fide severance from employment.<sup>5</sup> In addition, while New Jersey law permits these retirees to return to employment with the same employer after 120 days without re-enrollment into the retirement system or suspension of retirement benefits, the 180-day requirement still applies for tax purposes when considering the pension as an in-service distribution. A retiree who is under the age of 59½ and returns to employment with the same employer prior to a 180-day break in service may therefore be responsible for excise tax penalties under IRS regulations. (The retiree must report the early distribution tax on IRS *Form 5329*). The Division of Pensions is required to report the early distribution on the retiree's *Form 1099-R*.

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<sup>5</sup>Service limitations apply to critical need employees hired by local boards of education. A contract issued by a local board of education to a retiree employed as a certificated superintendent or a certificated administrator may not exceed one year, but may be renewed for one additional year with that board of education. No additional service may be provided to that board of education beyond the maximum period of two years. Attempts to continue such service beyond the two year period as an independent contractor, as a leased employee from another board of education or through a third-party employer, are considered a violation of the statute.

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**Education Employees – Coaches**

Chapter 21, P.L. 2014, enacted July 30, 2014, permits a former member of the TPAF, who has been granted a retirement allowance for any cause other than disability, to become employed again with the former employer as a coach of an athletics activity if the following conditions are met: (1) the re-employment commences after the retirement allowance becomes due and payable<sup>6</sup>; (2) the former member had attained normal retirement age as of the date of retirement<sup>7</sup>; and (3) the compensation for the employment is less than \$10,000 per year. Because all such situations would involve retirees over 59½, there would not be any excise tax penalties on early distributions

**Recalled Judges**

Pursuant to N.J.A.C. 17:1-17.14(c)2, the 180-day requirement of a bona fide severance does not apply to a JRS retiree, a retired Judge of Workers' Compensation, or a retired Administrative Law Judge, provided the judge attained age 60 prior to retiring from the JRS or PERS, and was recalled to service under one of the following statutory provisions:

N.J.S.A. 43:6A-13 — Provides for the recall of retired justices and retired judges of the JRS by the Supreme Court for temporary service and permits the retiree to continue to receive retirement benefits from the JRS. The retired justice or judge may be paid a per diem allowance fixed by the Supreme Court, which, when added to the retirement allowance, cannot exceed the current salary of a justice or judge of the court from which he or she retired.

Chapter 6, P.L. 2005 — Allows retired administrative law judges and workers' compensation judges to be recalled for service, with the judge's consent. It amended N.J.S.A. 52:14F-4 and N.J.S.A. 34:15-49, which requires these judges to retire upon attaining age 70, to provide that upon such recall the retired administrative law judge or judge of workers' compensation will have all the powers of such a judge and will be paid a per diem allowance to be fixed by the Director/Chief Administrative Law Judge or the Director/Chief Judge of the Division of Workers' Compensation, as applicable. The recalled judge will be reimbursed for reasonable expenses actually incurred in connection with the assignment and will be provided with such facilities as may be required in the performance of the judge's duties. Those per diem compensation and expenses will be paid by the State. Payment for services and expenses will be made in the same manner as payment is made to the judges of the Office of Administrative Law or Division of Workers' Compensation, as applicable, from which the judge retired. Because all these provisions cover recalls of a judge who attained at least age 60 at retirement, there would not be any excise tax penalties on early distributions (due to the age 59½ exception).

**RETURN TO WORK WITH ANOTHER NEW JERSEY PUBLIC EMPLOYER**

In addition to the bona fide severance requirement of 180 days if you are considering returning to employment with your former employer, retirees are also required to satisfy a separation from service period before returning to public employment in New Jersey with a different employer (in a position covered by a different retirement system). The Division of Pensions notifies you in writing that your retirement is approved by the

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<sup>6</sup> Either more than 30 days after the date of retirement, or more than 30 days after the retirement has been approved by the Board of Trustees of the TPAF, whichever date is the later of the two.

<sup>7</sup> Normal retirement age for members of the TPAF means age 60 for persons who became members before November 2, 2008 (Tiers 1 and 2); age 62 for persons who became members on or after November 2, 2008 (Tiers 3 and 4); age 65 for persons who became members on or after June 28, 2011 (Tier 5).

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Board of Trustees. You must wait until at least 30 days after the date of this notification or 30 days following your date of retirement, whichever is later, before you agree to accept employment with another employer in a position which is not covered by your retirement system. During this 30-day period you can still cancel your retirement application. Thereafter, your retirement benefits are finalized and become “due and payable.”<sup>8</sup>

If there was a pre-arrangement at the time of your retirement to return to a position with another employer and the position would have been covered by the same retirement system had your retirement not occurred, your retirement may be cancelled, and you may be required to continue as an active employee under your original retirement account. If your retirement allowance is cancelled, you must submit a retirement application to the Division of Pensions and Benefits when your employment ends in order to receive retirement benefits.

- Example 5 – A Tier 1 PERS employee<sup>9</sup> retires from employer A on December 1, 2015, and commences employment on January 2, 2016 with employer B in a part-time PERS position paying \$20,000 per year. The individual arranged the employment with the new employer at or about the time of retirement. Since Tier 1 PERS employees are eligible to continue participation in the retirement system as part-time employees, the new employer should have completed a PERS transfer application for the individual to continue in the retirement system for the new position. In this example, the PERS retirement benefit will be cancelled and the individual will be required to reimburse the retirement system for all retirement benefits received. PERS pension contributions will be required in the new position from the date of hire. There is no limitation on the amount of benefits that may be recovered by the retirement system in these situations. Further, the employee must terminate employment with Employer B, and file for retirement prior to the effective date of the new retirement in order to collect benefits.
- Example 6 – A Tier 1 PERS employee retires from municipality A on July 1, 2014 and commences employment in a position covered under the Defined Contribution Retirement Plan (DCRP), such as a Business Administrator, with municipality B on August 10, 2014, having arranged for the employment at or about the time of retirement from municipality A. As a Tier 1 member of PERS, the position of Business Administrator qualifies the employee for continued participation in the PERS, therefore, the new employer should have completed a PERS transfer application for the individual to continue in the retirement system for the new position. In this example, the PERS retirement benefit will be cancelled and the individual will be required to reimburse the retirement system for all retirement benefits received. PERS pension contributions will be required in the new position from the date of hire. There is no limitation on the amount of benefits that may be recovered by the retirement system in these situations. Further, the employee must terminate employment with Employer B, and file for retirement prior to the effective date of the new retirement in order to collect benefits.

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<sup>8</sup> Employees who work a 10-month school year and retire on July 1 or August 1, must count the 30-day period service from the start of the following normal school year on September 1.

<sup>9</sup> A Tier 1 PERS employee refers to an individual who was enrolled in the PERS prior to July 1, 2007.

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**A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS**

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**WORKING AS A PUBLIC EMPLOYEE AFTER RETIREMENT**

*The following assumes that you are a qualified retiree, meaning you have already met the 180-day requirement for bona fide severance of employment if the new position is with the former employer, or that you are well past the date at which your retirement benefits became “due and payable,”<sup>10</sup> if your new position is with a different employer. Your employer is required to report your employment to the Division of Pensions and Benefits.*

**Enrollment in the Retirement System Required**

Re-enrollment in your former retirement system is generally required if you accept full-time employment in a position covered by that system.<sup>11</sup> The Division routinely compares Department of Labor and Workforce Development records with retired payroll records. The audit performed as a result of this review will target retired public employees working more than 25 hours per week or earning a salary substantially similar to that earned in active employment prior to retirement. If, as a result of an audit, your employment is deemed to satisfy eligibility for enrollment in your former retirement system, you will be required to repay all of your retirement benefits which were received after the date of your required re-enrollment until you retire again. You will also be responsible for the payment of pension contributions from the date of re-enrollment through the date of termination of the most recent employment.

If you are required to be re-enrolled in your former retirement system, your retirement allowance and any related retired health benefits will be cancelled for the duration of your employment. In certain instances you may be required to prove insurability to have group life insurance coverage. In the event of your death during the second membership, no benefits from either the previous membership or retirement are payable (except for the return of uncollected contributions). This includes option settlements and death benefits.

Your date of re-enrollment is determined under the general enrollment procedures of the retirement system and you are treated as an active employee in all respects. You will be enrolled in a new retirement system account under the membership tier in effect at the time you returned to employment. When you retire for the second time, any additional allowance due as a result of the second period of service is generally determined in accordance with rules governing your new membership tier. You may also elect to withdraw the contributions associated with the second period of service. You will be required to file an application with the Division of Pensions and Benefits in order to initiate retirement benefits or the withdrawal of contributions relating to your new membership account.

**Special Provisions for Disability Retirees**

If you retired on an Ordinary Disability or Accidental Disability Retirement<sup>12</sup>, before you can return to a position covered by your former retirement system you must first be approved for re-employment by the Board of Trustees. If approved to return, your original retirement system account and membership tier are restored. Enrollment criteria for the original membership tier also apply. When membership is restored, pension contributions resume and you are treated as an active employee in all respects.

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<sup>10</sup> Either more than 30 days after the date of retirement, or more than 30 days after the retirement has been approved by the Board of Trustees, whichever date is the later of the two.

<sup>11</sup> PERS and TPAF statutes define full-time, which is 35 hours per week for State employees and 32 hours per week for local government or local education employees.

<sup>12</sup> Tier 4 and Tier 5 PERS or TPAF members (enrolled in PERS or TPAF after May 21, 2010) are not eligible for Ordinary Disability or Accidental Disability Retirement; however, they may qualify for long-term disability insurance benefits.

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If you are receiving disability retirement benefits from the PERS or TPAF, your retirement allowance may be adjusted if you have earnings from any employment (public, private, or self-employment) after retirement. See the disability retirement fact sheets for additional information (Fact Sheet #15, for PERS or TPAF members; Fact Sheet #16, PFRS members; or Fact Sheet #39, SPRS members).

### **Special Provisions for PFRS Retirees**

N.J.S.A. 43:16A-3.1 addresses the special situation of a PFRS retiree who is appointed to a position with a law enforcement unit or firefighting unit with administrative or supervisory duties over police officers and/or firefighters (such as Police Director, Director of Public Safety, etc.). If a PFRS retiree is appointed to this type of position within six months after retirement, the retirement allowance is suspended and the retiree must re-enroll in PFRS.

### **ENROLLMENT IN THE RETIREMENT SYSTEM NOT REQUIRED**

*The following assumes that you are a qualified retiree, meaning that you have already met the 180-day requirement for bona fide severance of employment if the new position is with the former employer, or that you are well past the date at which your retirement benefits became “due and payable”<sup>13</sup>, if your new position is with a different employer. Your employer is required to report your employment to the Division of Pensions and Benefits.*

If you return to work in a position covered by a different New Jersey State-administered retirement system, your retirement allowance may continue and you can receive salary from the employment; however, you cannot become a member of the other retirement system.

### **SPECIAL PROVISIONS FOR ELECTED OFFICIALS**

Elected officials are also subject to the 180-day “bona fide severance of employment” as defined under N.J.A.C. 17:1-17.14(a)2. With the repeal of N.J.S.A. 43:15A-47.2 and N.J.S.A. 43:16A-5.1, members of the PERS and PFRS can no longer retire while holding an elected public office and collect a retirement allowance.<sup>14</sup>

- Example 7 – An individual contributes to the PERS as both a full-time state employee and as an elected official of a municipality.<sup>15</sup> In order to retire and start collecting PERS retirement benefits the individual must fully separate from both PERS positions, including the elected office. Waiving the receipt of any compensation for the elected office while continuing to serve in the elected office would not constitute a bona fide severance of employment. Under these circumstances, the member would not be entitled to the receipt of PERS retirement benefits claiming volunteer status.

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<sup>13</sup> *Either more than 30 days after the date of retirement, or more than 30 days after the retirement has been approved by the Board of Trustees, whichever date is the later of the two.*

<sup>14</sup> *Those who were granted a retirement allowance prior to the repeal of N.J.S.A. 43:15A-47.2 and N.J.S.A. 43:16A-5.1 (June 28, 2011) and who are currently in the elected office may continue to receive their pension benefit and salary for that elected office.*

<sup>15</sup> *After the passage of Chapter 92, P.L. 2007, newly elected officials are no longer eligible to enroll in the PERS. Those enrolled in PERS prior to July 2007 are permitted to continue in the PERS for the elected position if they are continuously re-elected to that same office.*



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- Example 8 – A member of a municipal fire department who is enrolled in the PFRS runs for an elected position in the same municipality. Upon being elected, the individual resigns from his position with the fire department and immediately files for PFRS retirement benefits. However, since this individual is continuing in another (elected) position with the same employer, he does not have a bona fide severance of employment from the municipality. He will not qualify for the receipt of retirement benefits from the PFRS until all service with the municipality ends.

Under N.J.S.A. 43:3C-3, a qualified retiree of a State-administered retirement system who is thereafter elected to public office may either continue to receive a retirement benefit from the former employment and would not be eligible for enrollment in the new retirement system, or may suspend the retirement benefit (and any related health benefits coverage) from the former employment and enroll in the New Jersey Defined Contribution Retirement Program while serving in the elected office. Upon termination of the elected office, the retirement benefit from the former employment would be reinstated.

### SELF EMPLOYMENT ISSUES

The Division of Pensions and Benefits is frequently approached by retirees who seek recognition as independent contractors rather than employees. If there was any arrangement made prior to retirement to return to employment — whether as a contract employee, leased employee, or an independent contractor — the employer/employee relationship is not completely severed and the retirement will be deemed invalid.

Because penalties levied by the Internal Revenue Service (IRS) can be severe, both you (the retiree) and the employer should give careful consideration before being classified as an independent contractor. In the event that you are incorrectly classified as an independent contractor, the employer will be assessed delinquent enrollment charges for failing to enroll you in the retirement system in a timely fashion. You will also be required to refund all retirement benefits received after the date enrollment should have occurred and pay any retroactive pension contributions. For more information, see Fact Sheet #84, *Professional Services Contracts, Independent Contractors, and Pension Enrollment*.

### OTHER CONSIDERATIONS

The following are additional issues that retirees should consider prior to accepting employment:

**Health Benefits** — A return to public employment in New Jersey may affect your eligibility to continue coverage under the State Health Benefits Program (SHBP) or School Employees' Health Benefits Program (SEHBP). Check with your prospective employer regarding your health coverage.

**Social Security Benefits** — There is an earnings test for people receiving Social Security benefits who are under Social Security's full-benefit retirement age. Check with the Social Security Administration at 1-800-772-1213 for information on earnings limits before accepting employment.

**Taxes** — For specific questions regarding the tax implications of returning to employment after retirement, employees and retirees should consult with a professional tax advisor or contact the IRS at 1-800-TAX-1040.

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Although every attempt at accuracy is made, it cannot be guaranteed.

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