

## City University of New York

### Section 211 Waivers – Policy and Process

The University is issuing these procedures to comply with New York State Retirement and Social Security Law (Article 7, Sections 210 – 212). Section 211, which covers the waiver requirements, was recently amended.

Retirees of most public agencies who are under the age of 65, and are hired or re-hired by a public agency, cannot earn more than \$30,000 in a calendar year and continue to receive pension payments/distributions unless they are granted a waiver. Retirees earning \$30,000 or less in a calendar year do not need a waiver, but must file documentation with the pension system. In order to receive a waiver:

- Retiree must meet the minimum stated requirements for the position.
- Retiree **cannot be employed in a similar or same position for a period of one year following retirement.**
- The agency must have a detailed plan to fill the position on a permanent basis.
- The hiring agency must have an urgent need to fill the position on a non-permanent basis as a result of an unplanned and unexpected vacancy where sufficient time is not available to recruit a qualified individual; or must have undertaken extensive recruitment efforts and found that **no non-retiree was qualified and available to take the position.** In the latter case, the search must include advertising in at least two sources.
- The hiring agency must attest that employment of the retiree is in the best interests of the government service.

The **maximum waiver duration is two years.** Except in rare and compelling circumstances, **the retiree may not be employed until the waiver has been approved by the Board of Trustees.** Exceptions to this rule require prior approval from the Senior University Director of Human Resources Operations and will not be approved for a period beyond one month before the submission of the Section 211 waiver request. A waiver request **cannot be retroactive to a prior calendar year.**

Under Section 211, the University may not hire individuals requiring a waiver to a position that can lead to permanency (*i.e.*, tenure, CCE, or 13.3b appointments in the instructional staff, or probationary or permanent status in classified civil service titles.) Therefore, a retiree under the age of 65 who will earn more than \$30,000 in the calendar year may not be appointed to such titles unless he/she provides written assurance that he/she will suspend pension benefits for the period of employment with CUNY, in which case a Section 211 waiver is not required. Individuals requiring a 211 waiver may only be appointed as substitute instructional staff or provisional classified staff (assuming there is no active list).

For questions relating to for 211 waivers, please contact Raymond F. O'Brien, the Senior University Director of Human Resources Operations, at 212-794-5386.

### Waiver Applications

It is the retiree's responsibility to notify his/her College of retirement and earnings status and request a waiver. College Human Resources departments manage the search process and submit waiver applications to the Office of Human Resources Management. Applications must be submitted and approved before the retiree commences employment, unless prior approval of an exception has been granted, in which case the application must be submitted to the Office of Human Resources Management **no later than one month** after commencement of employment.

The Senior University Director for Human Resources Operations reviews and approves Section 211 waivers on behalf of the Vice Chancellor for Human Resources Management. An application must be submitted with a CUNY waiver request form (attachment I). Waiver applications may be returned with questions or requests for additional information. If approved, the College enters the waiver action in the Chancellor's University Report for the Board of Trustees' approval. Following the Board meeting date, the Secretary of the Board of Trustees approves and signs the waiver and returns it to Human Resources Operations, which notifies the College.

For all Section 211 waivers, the colleges must provide:

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| <b>Request Form</b>                               | Waiver Under Section 211 form (Attachment I), with all requested information and signatures.   |
| <b>Cover Letter</b>                               | Summarize the need for the position, the search effort, the disposition of other applicants, the important qualifications of the applicant including the experience and knowledge the retiree would bring to the position, and other relevant information, such as the impact of not selecting the retiree, or establish a need to fill the position because of an unexpected vacancy. |
| <b>Position Vacancy Notice</b>                    | Position Vacancy Notice for the search.  |
| <b>Affirmative Action Recruitment Plan</b>        | List advertising sources, the number of finalists, and final certification. Must include the number of candidates who applied, the number screened out, the number interviewed, and the reasons for non-selection of the finalists.  |
| <b>Recruitment Plan for Permanent Appointment</b> | Detailed plan to fill the position on a permanent basis.   |
| <b>Copies of Position Advertisements</b>          | Minimum of two different external advertisements reaching as broad a base as possible. The advertisement dates and publication/source must be listed. The CUNY web site is considered one advertising source.  |
| <b>Retiree's Resume/CV</b>                        | To establish that retiree meets the stated requirements and that retiree has not been employed in a similar or the same position for one year following retirement.  |

Please review all information for accuracy, particularly title, salary, and appointment dates. The position for which the waiver is requested must match the title of the position for which the search was performed (*i.e.*, the title on the PVN). The employee must be below the age of 65 and have earnings exceeding the annual limit.

The waiver requests should be sent to the Senior University Director, Human Resources Operations.

All applications are reviewed when received. If an exception is granted to permit the college to employ the applicant pending waiver approval, such employment is with the understanding that an adverse determination may affect the retiree's income earning capacity.

Waivers are subject to audit by City and State agencies, and to Freedom of Information Act requests. The annual earnings limit is periodically reviewed and revised by the State.

### Expiration of Waivers

Although employees are responsible for tracking the expiration of their waivers, and requesting a new waiver if needed, HR Directors are asked to track expiration dates. Colleges must notify employees when the waiver is no longer in effect. Employees must notify their pension system upon expiration of a waiver to adjust payments/distributions once they earn more than the annual limit. Amounts earned during the waiver's effective period do not count toward the limit. Employees may continue in their positions provided they adjust their pension distributions.

### For More Information

Search engine for consolidated laws of New York State (for text of Article 7, Section 211 of the New York State Retirement and Social Security Law):

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>