

MEMORANDUM

TO: SURS Covered Employers

FROM: Andrew Matthews, Chief Operating Officer

DATE: April 5, 2016

Re: Return to Work – 60 day Rule
40 ILCS 5/15-139

RETURN TO WORK QUESTIONS:

1. Can an employee “retire” on one date to maximize their retirement benefit and then return to work for their employer within 60 days, provided they do not receive monetary payment for services rendered to their employer and by doing so, satisfy the 60 day requirement of Section 15-139?

Answer: NO.

2. Can an employee “retire” but have an arrangement with his/her employer before “retiring” to return to work immediately upon completion of the 60 day requirement of Section 15-139?

Answer: NO.

EXPLANATION:

SURS is becoming aware of employees “retiring” on a date certain and then trying to remain at work during the 60 day period referenced in Section 15-139 of the Illinois Pension Code. Sometimes they attempt to do this by working on a volunteer basis or in the case of a grant, they attempt to do this by explaining that they will not use their grant money to pay themselves during the 60 day period and will only use the grant money to pay for operating costs during that time frame. SURS is also becoming aware of situations where an employee plans to “retire” on a date certain but the employee and the employer have worked out a pre-arranged plan for the employee to return to work after the 60 day return to work period expires. In both scenarios, the employee and the employer appear to fully understand that although the employee is “retiring,” they will return to work and will continue to perform their job duties, sometimes uninterrupted (without pay). Most, if not all, of these scenarios are due to a desire by the employee to lock in a higher interest rate and/or to otherwise maximize their retirement benefits and circumvent the 60 day rule outlined in Section 15-139.

The act of not actually separating from the employer for 60 days contravenes the intent of Section 15-139. This section requires employees to truly retire from their job before returning to

employment with any SURS covered employers. To find otherwise would allow employees to “time” their “retirement” to obtain a maximum retirement benefit when they really have no intention of truly retiring. Furthermore, even having a specific plan before “retiring” to return to one’s job after “retirement” could cause serious problems for the System.

The IRS has previously ruled in another 401(a) plan matter that according to Sections 1.401(a)-1(b)(1)(i) and 1.401-1(b)(1)(i), a qualified pension plan is generally not permitted to pay benefits before retirement and that “Employees who “retire” on one day in order to qualify for a benefit under the Plan, with the explicit understanding between the employee and employer that they are not separating from service with the employer, are not legitimately retired. . . . [B]ecause these employees would not actually separate from service and cease performing services for the employer when they “retire” these “retirements” would not constitute a legitimate basis to allow participants to qualify for early retirement benefits (which are then immediately suspended.) Such “retirements” will violate section 401(a) of the Code and result in disqualification of the Plan under section 401(a) of the Code.” (*emphasis added*)

As such, SURS finds that the Pension Code requires a true 60 day separation between the employee and the employer during the 60 day time period referenced in the statute. Any failure to adhere to the 60 day separation requirement of section 15-139 could arguably result in a ruling by the IRS that disqualifies SURS as a 401(a) Plan which could have devastating effects on SURS and its members.

To ensure that employees and employers are adhering to this 60 day statutory requirement, SURS will now require employees to certify on their retirement application as follows:

“I certify that I have no agreement, written or oral, to return to employment in any capacity (paid or unpaid) with my current employer or any other SURS-covered employer after my retirement date.”

It should also be noted that any violation of Section 15-139 would require an employee’s annuity to be cancelled and all annuity payments received would have to be refunded. The employee would continue to participate in the System as though they never “retired.” In addition, any person who knowingly makes any false statement, or falsifies or permits to be falsified any record or records of this system, in any attempt to defraud the system may be subject to criminal prosecution.

Please contact SURS with any questions regarding this information.