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EXPLANATION: STAFFING WITH AND EMPLOYING RETIREES

MSBA has created this NEW policy to address the various ways the district employs or re-employs persons who are receiving retirement benefits under a Missouri education retirement system. This policy will replace policies GCPC and GDPC, which MSBA recommends that districts rescind.

MSBA is not including detailed references to the retirement statutes and regulations in this policy. It has simply become too cumbersome to attempt to summarize in policy all the various regulations regarding hiring a retiree, and the legislature seems to be adopting new regulations every year. MSBA encourages district administrative staff to work directly with the various retirement systems to ensure that state laws are strictly followed.

- ▶ Information on retirement from the Public School Retirement System (PSRS) and the Public Education Employee Retirement System (PEERS) can be found at: <https://www.psr-peers.org/>.
- ▶ Information on retirement from the Kansas City Public School Retirement System (KCPSRS) can be found at: <https://www.kcpsrs.org/>.
- ▶ Information on retirement from the Public School Retirement System of the City of St. Louis can be found at: <http://www.psrstl.org/>.

Please note that there have been some recent changes to the retirement laws impacting a retiree's ability to be employed while collecting retirement benefits.

Senate Bill 892 (2018) – PSRS retirees may be employed in a noncertificated position full-time but may only earn up to 60 percent of the minimum teacher's salary (\$15,000) without losing retirement benefits and without paying into the PEERS. The employing district must pay the employer portion of retirement.

Senate Bill 62 (2017) – Employees who have retired and are receiving benefits from the PSRS are allowed to work a maximum of 550 hours with a public school in PSRS and still collect their retirement. This law applies the 550-hour limitation to retirees who perform services for a public school district through a third party (like a temporary work agency) or as an independent contractor if the retiree is working as a temporary or long-term substitute teacher or in another position that would normally require the person to have a teaching certificate.

This bill applies a 660-hour limitation to school employees who are receiving retirement benefits from KCPSRS who perform services for the Kansas City School District after

retirement through a third party (such as a temporary work agency) or as an independent contractor.

Retirees, the Affordable Care Act and Health Insurance

Districts with 50 or more full-time or full-time equivalent employees are subject to the Affordable Care Act (ACA) provisions that govern whether an employee must be offered affordable health coverage. (If your district has fewer employees, the issues discussed in this section do not apply to your district.) The ACA does not impact the employment of most retirees, but if the district uses the look-back measurement method, it could have implications for persons who worked full-time for the district, retired, and were immediately re-employed on a part-time basis the following year.

The look-back measurement method works prospectively. If an employee works for the district full-time during the district's measurement period, then the district must offer the employee insurance during the stability period even if the employee's hours are reduced as long as the employee is still on the district's payroll. Even if the employee retires or resigns, if there has not been a 26-week break in service before the employee is re-employed, the district cannot consider the employee as "new," and the employee is entitled to be offered insurance during the stability period.

Because most districts that are subject to the ACA use the look-back measurement method to determine eligibility for coverage (see GCBC-AP or GDBC-AP to see what your district uses), when the district considers rehiring someone who recently worked for the district full-time but has now retired, the district has a choice to make:

1) **Do Not Rehire Immediately.** If the district waits 26 weeks prior to rehiring the former employee, the employee is considered a "new" employee, and the hours worked under the previous measurement period do not entitle the retiree to health insurance. Some districts have policy language in policy GB that prohibits rehiring to a part-time position until there has been a 26-week break. The following is an example the district might consider in policy GB (because the issue impacts more than just retirees):

The district does not offer health coverage for part-time or substitute employees unless required by law to do so. Therefore, the district will not consider re-employing a recently retired or former employee in a part-time or substitute capacity if the person would be entitled by law to district-paid health coverage. However, the district will consider an application once the person has gone 26 weeks without being credited for an hour of service with the district. Likewise, the district will not consider transferring a full-time employee to a part-time position if the employee would be entitled by law to district-paid health coverage.

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2) **Pay the Insurance.** If the district immediately rehires someone who worked full-time the previous year but just retired, the employee is likely owed insurance during the district's stability period. There is an exception in the law that would minimize this obligation to three months if the employee was initially hired full-time and has been offered affordable insurance throughout their employment with the district. Either way, the district can simply offer the retiree insurance (even if it does not do so for other part-time staff) until the retiree has worked another measurement period where he or she has firmly established that he or she is part-time and not owed insurance under the ACA.

3) **Pay the Penalty.** Some districts are desperate for qualified staff and are willing to risk a penalty under the ACA. If the district provides affordable insurance options to at least 95 percent of the employees to whom it should be offering insurance, the district is not subject to Penalty A, the large penalty. It is only subject to Penalty B, the smaller penalty. This penalty is imposed only if the applicable employee who is not offered insurance goes onto the Health Insurance Marketplace (also known as "the Exchange") to purchase the insurance. Even if that were to happen, the penalty is typically less than the cost of offering the insurance, so many districts have decided to take the risk.

Because each district is different and MSBA does not know the choices the district will make, MSBA has not addressed health insurance specifically in this sample policy. However, districts need to be aware of the issue and may want to add additional language to this policy. Feel free to call the MSBA Legal Department if you have any questions.

MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

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|---|----------------------|---|----------------------------|--|----------------------|
| | Board Secretary | X | Business Office | | Coaches/Sponsors |
| | Facility Maintenance | | Food Service | | Gifted |
| X | Human Resources | X | Principals | | Library/Media Center |
| | Health Services | | Counselor | | Special Education |
| X | Transportation | | Public Info/Communications | | Technology |

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STAFFING WITH AND EMPLOYING RETIREES

For the purposes of this policy, a "retiree" is defined as a person who is receiving retirement benefits from the Missouri Public School Retirement System, the Public Education Employee Retirement System, the Kansas City Public School Retirement System or the Public School Retirement System of the City of St. Louis.

The Raytown C-2 School District encourages the superintendent or designee to consider past public school experience when making staffing decisions. When the district will benefit, the district may employ a retiree or contract with a retiree as an independent contractor. The district may also utilize the services of a retiree employed by a third party including, but not limited to, a staffing agency. The district will not create a position solely to benefit a retiree, but the district encourages retirees to apply for positions with the district.

However, given the strict regulation of retirees, the district will staff with a retiree only in situations where the applicable retirement laws will not be violated and the retiree's retirement benefits will not be jeopardized. To avoid compromising a retiree's benefits, the district will not reach a written or unwritten agreement for future employment with a person who has retired or is going to retire until the person has received his or her first retirement benefit payment.

The superintendent or designee may seek legal advice on compliance with the applicable laws and regulations.

Records

Retirees required by law to limit the number of hours they work for the district will maintain accurate records of the dates and hours they have worked as directed by the district and will provide those records to the district. Such records will be maintained by the district.

Staffing Using Independent Contractors

The district may staff positions using retirees serving as independent contractors, but the superintendent or designee will consult the district's legal counsel or auditor when necessary to ensure that the retiree is appropriately categorized for tax and withholding purposes. In accordance with law, any person performing work for the district for which teacher or administrator certification is required must be an employee of the district, not an independent contractor.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted:

Cross Refs: AC, Prohibition against Discrimination, Harassment and Retaliation

Legal Refs: §§ 161.855, 169.322, .324, .331, .475, .560, .561, .596, .660, RSMo.
Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634
16 C.S.R. 10-5.010, 6.060

Raytown C-2 School District, Raytown, Missouri