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Authors:



Gary R. Brochu
(860) 251-5705
gbrochu@goodwin.com



Richard I. Cohen
(860) 251-5803
rcohen@goodwin.com

TRB Issues New Guidance Concerning the Reemployment of Retired Teachers

On June 17, 2015, Connecticut's Attorney General issued an opinion concerning the "statutory limits on the compensation provided to reemployed teachers (including superintendents and other administrators) pursuant to Conn. Gen. Stat. § 10-183v(a)." Based on his analysis of the language of Conn. Gen. Stat. § 10-183v, the Attorney General concluded "that a teacher may be reemployed pursuant to Conn. Gen. Stat. § 10-183v(a) while receiving a retirement benefit from the [Teachers' Retirement] System, but he or she may not receive compensation beyond "forty-five percent of the maximum salary for the assigned position."

Following the Attorney General's opinion, the Teachers' Retirement Board (TRB) released guidance concerning its interpretation and plans for implementation of provisions concerning the reemployment by school districts of retired teachers, in the form of a "Questions and Answers" publication, dated July 27, 2015. This client alert reports on how TRB will now be implementing reemployment provisions for retired teachers, administrators and superintendents (note that when the terms "teacher" or "teachers" are used in this Client Alert, the term includes certified administrators and superintendents).

The Attorney General opinion and the recent TRB guidance will significantly change the manner in which school districts may employ TRB retirees under the 45% rule. While this Client Alert provides a summary of the most significant changes, school districts are advised to consult counsel with specific questions related to the reemployment of specific individuals.

1. *The changes to the reemployment of retired teachers only impact teachers hired pursuant to the 45% rule.*

The Attorney General's opinion was limited to his interpretation of CGS § 10-183v(a), which refers specifically to the ability of school districts to hire retired teachers subject to a restriction in compensation of no more than 45% of the maximum salary for the position in which the teacher is reemployed. TRB has expressly stated that reemployment in priority school districts and shortage areas, governed by CGS § 10-183v(b), is "exempt from the 45 percent rule."

2. *Reemployed retired teachers can receive no more than 45% of the maximum salary level for the assigned position.*

A reemployed teacher is limited to earning no more than 45% of the maximum salary

for the assigned position. The TRB guidance indicates that “salary” is the compensation paid to a teacher given the same experience and education level. By way of example, if a district had a maximum salary level of \$100,000 for holders of a 6th year degree, and a retired teacher who would otherwise be placed at the maximum step for teachers with a 6th year degree is reemployed, the retired teacher would be limited to receiving \$45,000 in compensation for the school year (e.g., 45% of \$100,000).

3. *Reemployed retired teachers cannot receive any form of fringe benefits when reemployed pursuant to the 45% rule.*

The TRB guidance states that a retired teacher reemployed under the 45% rule “may not receive any compensation in the form of fringe benefits.” This prohibition on the receipt of fringe benefits is very broad, encompassing health insurance, transportation allowances, tax deferred annuities, stipends, signing bonuses, etc. Please note that this is a very significant change from previous TRB practice, which not only allowed the receipt of fringe benefits by a reemployed teacher, but excluded certain types of fringe benefits from counting toward the 45% rule. In the words of TRB, “the receipt of fringe benefits under the 45 percent rule thereafter is prohibited.”

4. *TRB will allow some reimbursable expenses for reemployed teachers.*

Although TRB has expressly stated that transportation allowances and other fringe benefits will no longer be allowed, it will allow reemployed teachers to receive reimbursement for their normal and necessary business expenses, such as reimbursement for actual business mileage. These reimbursable expenses will not count toward the 45% rule. School districts should expect that TRB will closely scrutinize any such reimbursements.

5. *TRB will enforce these new requirements on a “going forward” basis.*

TRB will not be imposing the new 45% rule requirements for the reemployment of retired teachers on compensation received prior to July 1, 2015. (We understand from recent discussions with TRB that it will treat such compensation as “received” in a prior year, provided the compensation was earned and accrued in that prior year.) If a retired teacher was reemployed for the 2014-15 year, TRB will not be reviewing that teacher’s 2014-15 compensation to determine if it met the new requirements outlined in its July 27, 2015 guidance.

6. *TRB will be implementing the new 45% rule requirements in two phases.*

For post-retirement reemployment contracts that have been executed prior to August 1, 2015, TRB will allow for reemployed teachers to receive fringe benefits, so long as the combined value of these fringe benefits and salary do not exceed 45% of the maximum salary. With respect to these pre-August 1st contracts, beginning July 1, 2016, the reemployed TRB retirees may only be compensated via salary, and this compensation



cannot include fringe benefits, which means that fringe benefits are effectively subject to a 0% rule after that date. However, for post-retirement reemployment contracts that are executed on or after August 1, 2015, according to the TRB guidance, fringe benefits are not a permitted form of compensation at all, which means that fringe benefits are effectively subject to a 0% rule, beginning August 1, 2015, for any new post-retirement reemployment contract executed on or after August 1, 2015. TRB will be issuing new reporting forms that will include its new interpretation for retiree reemployment.

7. *When calculating compensation for reemployed retired teachers, TRB will not consider the value of benefits accrued prior to retirement.*

Some retired teachers and superintendents have accrued current benefits based on their employment prior to the date of their TRB retirement, such as retiree health benefits, payout for unused sick and vacation days, and severance payments. TRB will not include the value of these payments and benefits when determining a reemployed teacher's compensation if these benefits or payments were earned and accrued prior to his/her TRB retirement, nor will the receipt of these benefits prevent a retired teacher from being reemployed pursuant to the 45% rule. (See Section 5 above for more information.)

8. *TRB will utilize a "safe harbor" calculation when determining the maximum salary for part-time superintendent positions.*

TRB has developed a safe harbor provision to use when reviewing the salary of a retired superintendent reemployed in a part-time superintendent position. As a maximum full-time salary may be difficult to determine for a particular school district, TRB will assume that a full-time superintendent's salary that is less than 225 percent of the maximum teacher salary in the district's salary schedule will meet the safe harbor, provided that superintendent is not receiving more than 45% of that amount. For example, if the maximum step of a district's teacher salary schedule is \$100,000, then a reemployed superintendent may receive up to \$101,250 (45% of \$225,000). TRB acknowledges that this safe harbor provision is only a guideline and it will consider salaries that exceed this safe harbor provision on a case-by-case basis.

Questions or Assistance:

If you have any questions about the reemployment of retired teachers, please feel free to contact Gary R. Brochu at (860) 251-5705 or gbrochu@goodwin.com or Richard I. Cohen at (860) 251-5803 or rcohen@goodwin.com.

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One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1875 K St., NW - Suite 600
Washington, DC 20006-1251
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com