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September 23, 2010

TO: The Presidents of the Colleges
The Dean of the CUNY Law School
The Dean of the School of Professional Studies
The Dean of the School of Journalism
The Dean of the Macaulay Honors College
The Dean of the School of Public Health

FROM: Vice Chancellor Gloriana B. Waters *G. Waters*

SUBJECT: Waivers Under Section 211 of the NYS Retirement and Social Security Law

On July 30, 2010, Governor David A. Paterson signed into law a bill amending Section 211 of the New York State Retirement and Social Security Law. Section 211 permits waivers, under limited circumstances, for the re-employment of public sector retirees without diminution of their pensions. The effect of the recent amendment is to vest in the Board of Trustees responsibility for the approval of Section 211 waivers for the University's classified civil service employees, in addition to approval of waivers for its instructional staff employees. Previously, the New York City Department of City-wide Administrative Services (DCAS) had responsibility for approving waivers for the University's classified staff employees. Earlier amendments to Section 211 severely restricted the circumstances under which Section 211 waivers should be granted. Attached are revised procedures and forms that reflect the recent and earlier revisions to Section 211. I would like to review the highlights of these changes and place them in context.

The starting point for consideration is a general legislative disposition against the re-hiring of public sector retirees in the public sector. Exceptions to this general disposition are provided in Sections 212 and 211 of the New York State Retirement and Social Security Law. Section 212 permits retirees under the age of 65 to earn up to \$30,000 in a New York State public sector position without diminution of their pensions. Section 211 permits, in very limited circumstances, waivers to allow the re-employment of public sector retirees under the age of 65 without monetary limitation, unless the agency is re-hiring its own retirees, and without diminution of their pensions. The statute makes it clear that the granting of a Section 211 waiver is a stop-gap measure. The waiver may

only be granted to a retiree when there was an unplanned and unpredictable vacancy that must be filled on an emergency basis or when the college has conducted an extensive search and determined that there are no available non-retired persons qualified to perform the duties of the position. Retirees with Section 211 waivers may not be appointed to titles that carry the possibility of a permanent appointment. As a condition for the grant of a Section 211 waiver, the college must have "prepared a detailed recruitment plan to fill such vacancy on a permanent basis." Section 211 waivers have a maximum duration of two years.

Attachment I details the procedures for requesting a Section 211 waiver. Attachment II is the form by which the college requests the waiver. This form requires the President or designee to certify that the waiver meets the statutory requirements, that is, 1) that the College has an urgent need to fill the position on a non-permanent basis as a result of an unplanned or unexpected vacancy, or that the College conducted a search that conforms to standard University Policy and additional requirements for a Section 211 waiver, and that as a result of the search, there was no non-retiree who was qualified and available to take the position, 2) that the retiree meets the stated requirements for the position, 3) that the College has a need for the retiree's services and that this employment action is in the best interests of the government service, and 4) that the retiree has not been employed in a similar or same position as that from which he/she retired for a period of one year following retirement.

Section 211 waivers are extraordinary actions and should be requested from the Board of Trustees only after a careful consideration of the statutory restrictions. If you have any questions, please call Mr. Raymond O'Brien at (212) 794-5386. Thank you.

Attachments

c: Chief Academic Officers
Chief Administrative Officers
Directors of Human Resources
Labor Designees