

Reemployment of UC Retired Employees Into Senior Management Group and Staff Positions



Approved September 18, 2008

Amended February 9, 2009 and September 18, 2013

Responsible Officer: Vice President–Human Resources

Responsible Office: Human Resources

Effective Date: November 14, 2013

Next Review Date: The Responsible Officer will review the policy annually for update purposes and will conduct a full review at least every three years.

Who is Covered: All UC retired employees (Senior Management Group members; staff employees; and academic appointees) who are reemployed into Senior Management Group positions or staff positions. Recall appointments for academic appointees are governed by *Academic Personnel Policy 205 (Recall for Academic Appointees)* and the *Guidelines for Rehire of UC Retirees*. This policy is applicable to retired academic appointees who are rehired into SMG or staff positions; however, it does not apply to academic appointees recalled into academic administrator, teaching, research, or service appointments.

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I. POLICY SUMMARY

This policy governs the reemployment of all Retired Employees (as defined in Section II. below) into Senior Management Group (SMG) or staff positions.

II. POLICY DEFINITIONS

Career Appointment: An appointment established at a fixed or variable percentage of time at 50 percent or more of full-time that is expected to continue for one year or longer.

COBRA: The Consolidated Omnibus Budget Reconciliation Act (COBRA), which gives University employees and their covered family members the right to temporarily continue their UC-sponsored group health coverage in situations that would ordinarily cause the individual to lose coverage.

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under any policy. Any such action must be treated as an exception.

Executive Officer: The University President, Chancellor, or Laboratory Director.

Normal Retirement Age: Normal retirement age under UCRP means age 50 with a minimum of 5 years of service credit for Safety Members and age 60 with a minimum of 5 years of service credit for all other Members.

Retired Employees: Former University employees (SMG members, staff employees, and academic appointees) who have separated from University service and elected monthly retirement income or a lump sum cashout under the University of California Retirement Plan.

Senior Management Group: Individuals whose career appointments are in the Senior Management Group personnel program. Employees with a dual academic appointment at 0% and an appointment to a Senior Management Group position will be considered to possess a career appointment in the Senior Management Group.

SMG Level One: The position of President, all SMG positions that directly report to the Regents and/or the President, and the Chief Executive Officers of the medical centers.

SMG Level Two: All SMG positions that are not in SMG Level One.

Top Business Officer: Executive Vice President–Business Operations for the Office of the President, Vice Chancellor for Administration, or the position responsible for the location's financial reporting and payroll as designated by the Executive Officer.

III. POLICY TEXT

A. Scope

Retired Employees may be reemployed by the University in accordance with the provisions of this policy, which incorporates requirements developed [1] to address legal concerns regarding preservation of the tax-qualified status of the University of California Retirement Plan (UCRP) as described in Section B. below and [2] to address the University's concerns

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regarding operation of a public retirement plan, administrative feasibility, and compliance as described in Section C. below.

B. IRS Restrictions for Preserving the Tax-Qualified Status of UCRP

The Internal Revenue Code imposes restrictions on the timing of the distribution of benefits to participants in defined benefit plans such as UCRP. Generally, payments are permitted when an employee retires or attains normal retirement age. Otherwise, retirement benefits should remain in the plan so they will be available to provide support to participants after they cease working. Failure to satisfy the distribution timing restrictions could disqualify the plan, which could cause the vested benefits of UCRP members to become immediately taxable.

If an employee retires before reaching the normal retirement age under a pension plan, the Internal Revenue Service (IRS) may question whether the employee's retirement is a true separation from service or a strategy to access retirement funds that otherwise would not be available to the employee.

Normal retirement age under UCRP means age 50 with a minimum of 5 years of service credit for Safety members and age 60 with a minimum of 5 years of service credit for all other members. Once an employee attains normal retirement age, the IRS no longer is concerned about an employee's access to retirement funds because those funds were intended to be available at that age.

The following factors support a determination that a true separation from service has occurred for an employee who has not reached normal retirement age:

- The employee and the employer did not engage in discussions regarding reemployment before the employee's separation from service. The IRS has singled out this factor as critical to support the occurrence of a true separation. Therefore, for employees who have not reached normal retirement age, discussions about reemployment are prohibited until after the employee has received his or her first monthly payment or lump sum cashout or 30 days after separation, whichever is later. (For employees who have reached normal retirement age, discussions about reemployment prior to actual separation are not prohibited.)
- The length of the break in service before reemployment is reasonable
- Both the employer and the employee intended that a separation from service occur and that it be permanent
- Upon separation from service, the employee surrendered something of value, such as seniority rights or access to benefits available only to active employees
- The employer processed the employee as if he or she were separating from service. For example, a COBRA election or information on retiree health insurance coverage was provided to the employee upon separation, or benefits not available to anyone other than active employees were terminated, or a separation date was entered into the payroll/personnel system
- The employee is reemployed into a position that requires different skills from those used in his or her prior position or is with a different department or supervisor
- The employee was employed by an unrelated employer prior to reemployment

C. University Policy Restrictions

The following restrictions on the reemployment of Retired Employees are based on University policy which has been developed to reflect responsible stewardship of the University related to the perception of individuals drawing a retirement benefit and another

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UC income simultaneously, and to provide public accountability, transparency, and sound succession planning. Individuals receiving UCRP monthly retirement income who are reemployed into career appointments and suspend their monthly retirement payments are exempted from complying with certain restrictions as delineated in Section 5 below.

1. University Need

Reemployment must be as a result of University need, such as the Retired Employee possesses skills and institutional knowledge that the hiring department cannot otherwise obtain with equal cost effectiveness; the hiring department anticipates a prolonged process for hiring a replacement; or the hiring department anticipates that the Retired Employee will assist a replacement to acquire necessary skills and knowledge.

For situations in which a Retired Employee is reemployed on a temporary basis into a career position (such as the same position held before retirement or another vacant career position), the job must be posted and a search begun within 30 days of the vacancy being created and a minimum 30-day recruitment period must be held.

Written documentation on University need must be provided for all reemployment actions, including specification of the duration of the appointment in order to support the existence of University need.

2. Break in Service

A Retired Employee must not be reemployed until there has been a break in service of at least 30 days, but preferably 90 days. The break in service restriction is not required to preserve the tax-qualified status of UCRP if the Retired Employee has reached normal retirement age at the time of separation from service; however, this policy requires that the break in service restriction be applied to all Retired Employees.

In addition, employees who have not reached normal retirement age must not engage in discussions concerning reemployment until after they have received their first monthly payment or lump sum cashout or 30 days after separation, whichever is later.

3. Appointment Percentage

Due to potential Medicare complications and to minimize situations where individuals draw a retirement benefit and another UC income simultaneously, this policy requires that Retired Employees be reemployed with an appointment of no more than 43% during any 12 month period. Appointments may not normally exceed 12 months. Appointments in excess of 43% time may be approved in accordance with Section IV.C. or Section IV.D. of this policy as appropriate. Extensions beyond 12 months may be approved in accordance with Section IV.C. or Section IV.D. of this policy as appropriate. Appointments at 43.75% time or more provide eligibility to Retired Employees for UC-sponsored employee medical coverage, which makes Medicare become the secondary payer.

It is the intent of this policy that Retired Employees be reemployed with limited appointments that do not qualify them for active employee health and welfare benefits, regardless of whether the Retired Employee has elected monthly retirement income or a lump sum cashout.

Appointment at no more than 43% also ensures that Retired Employees who elected monthly retirement income are reemployed with limited appointments and do not become active members in UCRP.

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4. Duration of Reemployment

Reemployment in one or multiple positions must not exceed a total of 12 months. If reemployment is necessary after 12 months has expired, the request must be approved in accordance with Section IV.C. or Section IV.D. of this policy as appropriate.

5. Reemployment into Career Appointments

A Retired Employee who is receiving UCRP monthly retirement income, but agrees to suspend the payments, may be reemployed into a career appointment subsequent to an appropriate recruitment and break in service, and is not subject to the policy restrictions in Sections 1, 3 and 4 above, but is subject to Section 2.

A Retired Employee who took a lump sum cashout may not be reemployed into a career appointment and is subject to Sections 1, 2, 3 and 4 above.

D. Reporting Requirements and Disclosure

1. Reporting Requirements

For each Retired Employee reemployed into a staff position, the locations must submit a completed *UCRP Retired Employee Election Form* (not required for Retired Employees who received a lump sum cashout) to the Vice President–Human Resources at the time the Retired Employee is reemployed.

In addition, the locations must submit a summary report semi-annually by June 30 and December 31 of each year to the Vice President–Human Resources that incorporates a list of all reemployed Retired Employees, with identification of appointments greater than 43% within a 12-month period and appointments for which other types of variations from policy have been approved, and provide documentation that required approvals were obtained.

2. Disclosure

In accordance with University policy, individuals inside or outside the University are entitled to have access to information in employees' personnel records in conformance with State of California statutes and University records policies. The Executive Officer is to establish procedures for the release of information. Examples of information which is public information and is to be released upon request include name, current salary, retirement compensation, and appointment type.

IV. APPROVAL AUTHORITY

A. Implementation of the Policy

The Vice President–Human Resources is the Responsible Officer for this policy and has the authority to implement the policy. The Responsible Officer may develop procedures or other supplementary information to support the implementation of this policy. Such supporting documentation does not require approval by the Regents. The Responsible Officer may apply appropriate interpretations to clarify policy provided that the interpretations do not result in substantive changes to the underlying policy. The Office of the President Human Resources will work with the Responsible Officer of each policy to implement each policy.

B. Revisions to the Policy

The Regents is the Policy Approver for this policy and has the authority to approve any policy revisions upon recommendation by the President.

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The Vice President–Human Resources has the authority to initiate revisions to the policy, consistent with approval authorities and applicable *Bylaws* and *Standing Orders* of the Regents.

The Executive Vice President–Business Operations has the authority to ensure that policies are regularly reviewed and updated, and are consistent with the *Principles for Review of Executive Compensation* (Regents Policy 7201) and other governance policies.

C. Approval of Actions Authorized by this Policy

Actions authorized by this policy must be approved in accordance with this section.

1. For Retired Employees reemployed into Level One SMG positions, Level Two SMG positions, or positions designated as Officers of the University but that are not part of the SMG, reemployment actions must be approved in accordance with Section IV.C. of the policy on *SMG Appointment and Compensation* (Regents Policy 7701). The base salary at the appointment rate in the rehire position will be used to determine appropriate placement in the Market Reference Zone or salary grade, as applicable.
2. For Retired Employees reemployed into staff positions and whose base salary plus any other cash compensation in the rehire position (the total cash compensation at the appointment rate in the rehire position will be used) exceeds the Indexed Compensation Level:
 - a. The Regents has the authority to approve reemployment actions that are applicable to reemployed Retired Employees who report directly to the President or who are designated by the President as Other Specified Employees.
 - b. For staff positions at the Office of the President, the President has the authority to approve reemployment actions that are applicable to reemployed Retired Employees who do not report directly to the President.
 - c. For staff positions at a campus or the Lawrence Berkeley National Laboratory, the President has the authority to approve reemployment actions that are applicable to reemployed Retired Employees who report directly to the Chancellor or Laboratory Director.
 - d. For staff positions at his/her location, the Chancellor and Laboratory Director have the authority to approve reemployment actions that are applicable to reemployed Retired Employees who do not report directly to the Chancellor or Laboratory Director.
3. For Retired Employees reemployed into staff positions and whose base salary plus any other cash compensation in the rehire position (the total cash compensation at the appointment rate in the rehire position will be used) does not exceed the Indexed Compensation Level:
 - a. Reemployment actions authorized by this policy must be approved in accordance with local procedures, which must include a provision for review and sign off by the local Chief Human Resources Officer prior to approval by the location's Chancellor or Laboratory Director.

The Chancellor or Laboratory Director may delegate the authority to approve actions authorized by this policy that are applicable to Retired Employees reemployed into staff positions and whose base salary plus any other cash compensation in the rehire position does not exceed the Indexed Compensation Level. The Chancellor and Laboratory Director remain

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accountable for all reemployment actions at his/her location and for submission of timely and accurate reports in compliance with Section V.A. of this policy. Documentation of the delegation of authority must be submitted to the Vice President—Human Resources. The Office of the President will conduct periodic audits of delegations and reemployment actions.

D. Approval of Exceptions to this Policy

Unless there is explicit and specific authorization for an action by this policy, the action is considered to be an exception to this policy and must be approved in accordance with this section.

1. For Retired Employees reemployed into Level One SMG positions, Level Two SMG positions, or positions designated as Officers of the University but that are not part of the SMG, reemployment actions must be approved in accordance with Section IV.C. of the policy on *SMG Appointment and Compensation* (Regents Policy 7701). The base salary at the appointment rate in the rehire position will be used to determine appropriate placement in the Market Reference Zone or salary grade, as applicable.
2. For Retired Employees reemployed into staff positions and whose base salary plus any other cash compensation in the rehire position (the total cash compensation at the appointment rate in the rehire position will be used) exceeds the Indexed Compensation Level:
 - a. The Regents has the authority to approve reemployment actions that are applicable to reemployed Retired Employees who:
 - i. Are designated as Other Specified Employees by the President;
 - ii. Will report directly to the President;
 - iii. Will report directly to the Chancellor or Laboratory Director, or
 - iv. Work at the Office of the President.
 - b. The President has the authority to approve reemployment actions that are applicable to reemployed Retired Employees who do not report directly to the Chancellor or Laboratory Director.
3. For Retired Employees reemployed into staff positions and whose base salary plus any other cash compensation in the rehire position (the total cash compensation at the appointment rate in the rehire position will be used) does not exceed the Indexed Compensation Level:
 - a. The local Chief Human Resources Officer must review and sign off on a request for an exception to this policy before submission to the location's Chancellor or Laboratory Director for approval.

The Chancellor and Laboratory Director may delegate the authority to approve exceptions to this policy but remain accountable for all reemployment actions at his/her location.

V. COMPLIANCE

A. Compliance with the Policy

The following roles are designated at each location to implement compliance monitoring responsibility for this policy:

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The Top Business Officer and/or the Executive Officer at each location will designate the local management office to be responsible for the ongoing reporting of policy compliance, including collecting all relevant compensation package activity, and creating specified regular compliance reports (such as a monthly compensation compliance report) for review by the location’s Top Business Officer.

The Top Business Officer establishes procedures to collect and report information, reviews the specified regular compliance reports (such as a monthly compensation compliance report) for accuracy and completeness, reviews policy exceptions and/or anomalies to ensure appropriate approval has been obtained, and submits a copy of the compliance report to the Executive Officer for signature.

The Executive Officer is accountable for monitoring and enforcing compliance mechanisms, ensuring monitoring procedures are in place, approving the specified regular compliance reports (such as a monthly compensation compliance report), and sending notice of final approval for the reports to the Senior Management Compensation Office, Top Business Officer, and Local Resources.

The Vice President–Human Resources is accountable for reviewing the administration of this policy. The Senior Vice President–Chief Compliance and Audit Officer will periodically monitor compliance to these policies, and the process and results will be reported annually to senior management and the Regents through the Committee on Compensation.

B. Noncompliance with the Policy

Noncompliance with the policy is handled in accordance with the Regents’ *Guidelines for Corrective Actions Related to Compensation Practices* and *Guidelines for Resolution of Compensation and Personnel Issues Resulting from the Findings of Audits and Management Reviews*.

Noncompliance is reported in the monthly compliance report from each location as approved by the Executive Officer and reviewed by the Senior Vice President–Chief Compliance and Audit Officer and the Regents at least three times per fiscal year.

REVISION HISTORY

As a result of the issuance of this policy, the following document is rescinded as of the effective date of this policy and is no longer applicable:

- *Reemployment of UC Retired Employees Into Senior Management Group and Staff Positions* (Regents Policy 7706), dated January 1, 2009

The following documents were rescinded as of January 1, 2009, the original effective date of this policy, and are no longer applicable to Retired Employees reemployed January 1, 2009 or later into Senior Management Group or staff positions:

- *Guidelines for Rehire of UC Retirees*
- *Reappointment Guidelines for Rehired Retirees*

IMPLEMENTATION PROCEDURES

FREQUENTLY ASKED QUESTIONS
