



City of Phoenix

ADMINISTRATIVE REGULATION	A.R. NUMBER 2.92 Revised
	FUNCTION Personnel and Payroll Page 1 of 5
SUBJECT CONTRACTS WITH OR REEMPLOYMENT OF RETIREES	EFFECTIVE DATE January 5, 2009
	REVIEWED DATE

INTRODUCTION

The City is experiencing many retirements. If little or no notice is provided by a highly skilled employee of his intent to retire, it can be challenging to continue effective day-to-day operations without the position being filled. This Administrative Regulation (AR) establishes the policies and procedures to be followed when it is determined that contracting with or rehiring a retired City employee is necessary to continue the delivery of City services. The policies and procedures in this AR are intended to comply with current federal tax and employment laws. Any changes in these laws will require updates to this AR.

The immediate rehiring of a retired City employee to perform part, or all, of their previous job duties is prohibited. Also, a commitment to future employment cannot be made prior to retirement, nor within the first six months after retirement and termination of employment. Questions about this AR should be directed to the Personnel Department at 602-262-7551.

1. Definitions

The following definitions apply to the provisions of this regulation:

City Retirement Plan means the City of Phoenix Employees' Retirement System (COPERS) as set forth in Chapter XXIV, Article II, of the Phoenix City Charter, or the Public Safety Personnel Retirement System (PSPRS) as set forth in ARS Section 38-841 et seq.

Contract with means to enter into a written agreement with a retired employee to perform a defined scope of work as an independent contractor pursuant to the provisions of this AR.

Reemploy means to appoint a retired employee into a City position whether full-time, part-time, seasonal, or temporary, pursuant to the provisions of this AR.

2. Policy

Individuals who retire under the provisions of a City retirement plan may not be reemployed into another regular full-time position covered by the same retirement plan.

However, it may be appropriate to reemploy a retiree when this person possesses specialized knowledge and skills that are needed for a short period of time. It is not appropriate to contract with or reemploy a retiree in order to avoid a regular, competitive selection process, or to

authorize a retiree to indefinitely perform his same duties and receive a salary or contract payment.

Pre-approval by the Personnel and Budget and Research Directors is required to reemploy a retiree. Departments must consult with the City Attorney as necessary. Pre-approval by the Personnel and Budget and Research Directors and the City Attorney (or their designees) is required to contract with a retired City employee.

3. Requirements for Reemploying or Contracting With Retirees

In reviewing requests to reemploy or contract with retirees, the following requirements must be met in order to comply with federal tax and employment law:

- Was there an advance agreement for future employment? A commitment to future employment (either by contract or through rehiring) cannot be made prior to retirement, nor during the period of time between retirement and re-employment or contract initiation.
- How long was the break between the termination of employment and the commencement of work? **With limited exception, at least six months must elapse between retirement and an agreement or contract for reemployment.**
- Are the retiree's duties substantially the same as they were before retirement? The retiree cannot be rehired for the sole purpose of performing the same job duties as performed before retirement.
- Is the work to be performed related to a specific project? Specific projects with defined scopes of work and deadlines may be appropriate.
- Is the work to be performed that which is typically done by a City employee? A retiree cannot indefinitely replace an authorized full-time position.
- What is the length of the contract? A contract with a retiree cannot continue indefinitely, and is limited to a one-year contract.
- Is the retiree receiving any benefits based on credited past service? There cannot be accrual of leave or reliance on prior seniority for benefits.
- Were all benefits paid out at the time of termination? This would identify a person who has retired.
- Is the retiree acting as an independent contractor? Are the manners, means, and mode of completing the work under the sole control of the retiree? A contract cannot be used if the person is performing the same duties assigned prior to retirement, is using work and parking space and related equipment, and has similar work hours.

Any questions regarding these requirements should be forwarded to the Personnel and Law Departments.

4. Contracts with Retirees

After meeting all of the requirements in Section 3 above, City departments may request approval to employ retirees through employment contracts when the scope of the contract falls into one of the following two categories:

- A. Performance During Recruitment** – The retiree may be contracted to perform the full range of duties associated with the retiree's pre-retirement assignment for a limited amount of time when a recruitment effort must be extended to find a replacement. If a current eligible list for the employee's classification is available, this type of contract is not

appropriate. **At least 30 days must have elapsed between the employee's retirement date and the initiation of a contract.** Written approval from the Personnel Director is required prior to initiating a contract with a retiree for the purpose of performing duties during a recruitment effort.

The life of the contract may not exceed one year. There cannot be a commitment to a future job as described in Section 3 above.

B. Performance on a Specific Project – The retiree is contracted to perform work that is described in a detailed Scope of Work document. This work is usually for a specific project or to perform specific tasks comprising less than the full range of duties associated with a City position. Compensation should be based on clearly identified deliverables with deadlines, and not solely on an hourly rate. **At least six months must have elapsed between the employee's retirement and the initiation of a contract.**

The life of the contract should not exceed one year with one additional year of renewal. There cannot be a commitment to a future job as described in Section 3 above.

Any contract with a retired employee must clearly establish that the employment relationship with the retiree is as an independent contractor, and not as a City employee. In that regard, there is a strong preference to require the contracted retiree to provide his own facilities and materials to avoid an appearance that the person is a City employee. Any facilities or materials provided to the contracted retiree by the City should be specified in the contract.

Additionally, the contract must make it clear that the City does not have the right to control the procedures for accomplishing the contracted services. It is recommended that the contracted retiree formalize his own business by filing an assumed name certificate, having a letterhead and/or business card, opening a bank account in the business name, or providing an appropriate business license, and following all other requirements for doing business with the City.

A sample contract can be provided by contacting the Law Department's Employment Law section or the Personnel Department's Classification and Compensation Section.

5. Reemployment of Retirees

Retirees may be reemployed into authorized non-pension eligible positions as described below. These positions are limited to either temporary/part-time, or temporary/full-time positions without benefits. COPERS retirees may not be hired into benefit-eligible positions, including job share positions. **At least six months must elapse between the retiree's retirement date and the date of reemployment.**

A. Positions Authorized for Performance in a Similar Capacity – In this instance, the retiree is reemployed to perform the same or similar work that was performed before retirement. For example, a Personnel Clerk II is reemployed one year after he retired, to assist a different City department with payroll during a payroll clerk's maternity leave; or a retired Customer Service Clerk is reemployed to assist with a forecasted peak workload for a 45-day period.

Assignments for work in a similar capacity may not exceed 120 days or 1000 hours per calendar year. The rate of pay shall not exceed the maximum established for the classification.

B. Positions Authorized for Performance in a Different Capacity - In this instance, the retiree is reemployed to perform completely different work from that performed prior to retirement, on a part-time basis. For example, a retired Groundskeeper is reemployed as a Meal Delivery Aide, or a retired Secretary II is reemployed to work as a part-time Library Clerk.

If the work to be performed is substantially different, the retiree may continue working indefinitely in the part-time capacity.

6. Additional Procedures

- A. AR 3.10 requires City departments to receive approval in the form of a Letter of Exception, if a personal service contract exceeds \$40,000 in value, and if the department does not intend to issue a request for proposals or request for qualifications.¹ Exceptions to this process must be approved by the department head. Documentation of that approval must be maintained by the department.²
- B. The Phoenix City Charter, Article XIX, Section 1, requires all City contracts be in writing under the supervision of the City Attorney, executed by the City Manager, and countersigned by the City Clerk.³
- C. The reemployment of retirees, whether they are participants in the COPERS or PSPRS plan, is subject to the normal qualification, certification, and employment provisions of the Personnel Rules.
- D. The Personnel Rules allow the employment of individuals into the COPERS who have retired under the PSPRS. **A PSPRS retiree may be reemployed into a full-time COPERS-eligible position following a 30-day break in service, provided that the duties of the COPERS position are significantly dissimilar from the retiree's pre-retirement classification.** These individuals shall be treated as new employees with regard to rate of pay, all other compensatory payments, employee benefits, rate of leave accrual, and seniority.
- E. The hiring of a COPERS participant into a temporary non-fringe benefit position is subject to the normal operating procedures, budget, and fiscal approvals for such temporary positions.

In all cases, if the reemployed retiree is receiving the benefits of a disability pension or long term disability benefits, the hiring department must inform the appropriate pension board or the Personnel Department Benefits Section in writing. The hiring department is also required to provide to the appropriate pension board or the Personnel Department Benefits Section all information necessary to determine the effect of the reemployment on the disability pension or disability benefits received.

¹ AR 3.10 Section III(2)(A)(2)

² AR 3.10 Section III(3)(A)

³ See also AR 4.21


7. Effective Date of Reemployment

Arizona state statutes that govern conflicts of interest may prohibit a retiree from working for a contractor in an area in which the employee personally participated during his employment.¹ Work pursuant to a contract cannot commence until approvals are received and any potential conflict of interest has been assessed. Appointments of retirees to City positions cannot be effective until all approvals are received from the Personnel and Budget and Research Directors.

8. Exceptions

The City Manager may grant specific exceptions or variances to the provisions of this AR in extreme and unusual circumstances.

FRANK FAIRBANKS, City Manager



by Lisa Takata
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¹ ARS § 38-504; see also City's Ethics Policy