EL PASO COUNTY HUMAN RESOURCES DEPARTMENT

Post Retirement Employment

Adopted Date: June 16, 2008
Revised Date: December 9, 2019

I.   **Purpose**

A.   In order to avoid jeopardizing the County's qualified, tax-deferred retirement plan as well as safeguarding employees and retirees, the following policies and procedures related to rehiring El Paso County retirees must be followed.

B.   Should a County retiree seek employment with the County post retirement, the retiree must have been separated for a minimum of three (3) full calendar months, and have a true bona fide separation prior to being rehired by The County.

C.   Rehired retirees who did not have a bona fide separation of employment may be required to repay all of their monthly retirement payments and may owe a ten (10) percent excise tax on such payments. Abusing the retirement provisions in such a manner would violate a qualification requirement for retirement plans under Section 401(a) of the Internal Revenue Code, potentially resulting in significant tax consequences for El Paso County, its participating members and all previously retired employees.

II.   **Definitions**

A.   In-service distribution: Either a retirement benefit or an account withdrawal to an employee who is still actively employed with the County. These kinds of distributions are impermissible under federal and state law. An in-service distribution invalidates the employee's retirement or withdrawal. If it is not corrected by the return of benefit payments or the withdrawn amount, then it could jeopardize your TCDRS retirement plan's qualified status. Losing your plan's qualified status could subject The County and its employees to significant fees, penalties and additional taxes levied by the IRS.

B.   Bona fide separation in service: There must be an actual separation in service between the County and the employee in which the County/employee relationship is completely severed. There can be no agreement to be rehired by the County in the future prior to an employee's retirement.
1.   A termination is not considered bona fide if there is an expectation, understanding or agreement the termination is temporary or the person will be rehired in the future. This applies even if the position the employee will occupy:
     i.   Is different from his or her current position
     ii.   Pays more or less than the current position
     iii.   Is in a different department
     iv.   Requires different hours (for example, going full time to part time, or vice versa)
     v.   Is an independent contractor providing the same services they provided while an employee
     vi.   Is an elected position. Elected officials are considered employees of the county or district for purposes of participating in TCDRS.

III.   Conditions for Rehiring

A. Rehiring a retiree who is receiving a benefit from the County's TCDRS plan, or rehiring a former employee who has withdrawn his or her account, is not considered an in-service distribution, per TCDRS, as long as the following two conditions are met:

1. Bond fide separation in service; and
2. Three (3) full calendar months separation in service.
    i. Assuming a bona fide termination, the employee must be separated from employment for three full calendar months. For example, if an employee separates from employment on April 15, the earliest that person could be rehired with the same employer is August 1.

IV.   Procedure for Rehiring

A. Prior to rehire, the Department who is rehiring a retiree must fill out the affidavit and obtain an affidavit from the retiree and forward to the Human Resource's Department.
B. County's Human Resources Department will ensure the conditions for rehiring are met and will verify retirement/separation and rehire dates.
C. A rehired retiree may not begin employment until the Human Resources Department has received the two fully executed affidavits.
D. Any retiree who is rehired consistent with this policy will establish a new membership with TCDRS and will be considered to be a new member for the purposes of beneficiary determination and benefit selections.