

RESOLUTION #2020-02 TEMPORARY SUSPENSION OF CERTAIN POST-RETIREMENT REEMPLOYMENT RESTRICTIONS PURSUANT TO EXECUTIVE ORDER

March 30, 2020

WHEREAS, on March 6, 2020, Governor Gary R. Herbert issued Executive Order 2020-1, declaring a state of emergency due to coronavirus disease 2019 (COVID-19);

WHEREAS, on March 30, 2020, Governor Gary R. Herbert issued Executive Order 2020-9 ordering, to a limited degree, the temporary suspension of specific provisions of the Utah Postretirement Reemployment Restrictions Act in order to provide state and local entities with the ability to meet staffing needs sufficient to address the impacts of COVID-19, consistent with applicable federal law;

WHEREAS, Executive Order 2020-9 establishes the following “Critical Government Functions” that enable state and local officials to protect their communities, ensure continuity of functions essential to public health and safety, and are needed for response and recovery during the state of emergency:

- communications;
- emergency services and first responders;
- energy;
- financial services;
- food and agriculture;
- government facilities;
- healthcare and public health facilities;
- information technology;
- transportation systems; and
- water and wastewater systems;

WHEREAS, under Utah Code Annotated § 49-11-203(1)(c) the Utah State Retirement Board (Board) “shall ensure that the systems, plans, programs, and funds are administered according to law,” including Executive Order 2020-9;

WHEREAS, pursuant to Utah Code Annotated § 49-11-203(1)(k), the Board shall “develop broad policy for the long-term operation of the various systems, plans, and programs under broad discretion and power to perform the board’s policymaking functions, including the specific authority to interpret and define any provision or term under this title [Utah Code Annotated Title 49] when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans, or programs.”;

WHEREAS, Utah Code Annotated § 49-11-203(1)(n) provides that the Board shall act “consistent with this title [Utah Code Ann. Title 49] for the administration of the systems, plans, and programs in order to carry out the purposes of this title [Utah Code Ann. Title 49].”;

WHEREAS, the Board has broad rule-making authority with regard to postretirement reemployment restrictions pursuant to Utah Code Annotated § 49-11-1208;

WHEREAS, the Board desires to have uniform rules governing the temporary adjustments to postretirement reemployment restrictions in light of Executive Order 2020-9 and in an effort to treat members fairly and make administration of the systems more efficient.

NOW, THEREFORE, BE IT RESOLVED, that the following temporary rules apply to eligible retirees and participating employers of URS defined benefit plans, consistent with applicable federal law:

1. These temporary rules only apply to reemployment of a retiree who:
 - a. retired prior to March 30, 2020; and
 - b. becomes temporarily reemployed by a URS participating employer to ensure adequate staffing of Critical Government Functions during the governor’s declared state of emergency.

2. The following provisions will not be enforced by URS for qualifying reemployment:
 - a. Cancellation of a retirement allowance for a reemployed retiree without a one-year break in service pursuant to Utah Code Annotated § 49-11-1204(2);
 - b. A participating employer’s payment of the amortization rate to URS for the reemployment pursuant to Utah Code § 49-11-1204(4)(b);
 - c. The requirement for a participating employer to *immediately* notify URS of retiree reemployment pursuant to Utah Code Annotated § 49-11-1206(1)(b);
 - d. The requirement for a retiree to immediately notify URS of reemployment pursuant to Utah Code Annotated § 49-11-1206(3); and
 - e. The penalties enforceable against retirees and participating employers pursuant to Utah Code Annotated § 49-11-1207(1).

3. Notwithstanding the rules described above in paragraph 2, the temporary reemployment exception under the Executive Order and this Resolution is available only for a member who continues to receive a monthly retirement allowance if:
 - a. At the time of reemployment, the retiree is at least:
 - i. 50 years old, if the member retired from a public safety system or firefighter retirement system; or
 - ii. 55 years old; and

- b. At the time of retirement, the retiree, in accordance with the provisions and definitions in Board Resolution #2019-05, Termination of Employment and Reemployment:
 - i. Had a “bona fide termination” of all employment and contractual fee-for-services relationships with any participating employer; and
 - ii. Did not have any prearrangement anticipating a post-retirement employment or fee-for-services relationship with any participating employer.
4. If a retiree does not qualify for the temporary reemployment exception under these rules, the retiree may be reemployed by a participating employer and the retirement allowance will be cancelled pursuant to Utah Code Annotated § 49-11-1204. Payment of the retirement allowance for such a retiree will resume following termination of the reemployment pursuant to Utah Code Annotated § 49-11-1204.
5. A participating employer shall report the temporary reemployment of a qualifying retiree pursuant to the Executive Order and this Resolution to URS as soon as possible and practical. By employing a qualifying retiree, a participating employer shall be deemed to have certified to URS (which must be officially confirmed in its eventual notification of the reemployment to URS) that:
 - a. The participating employer performs Critical Government Functions;
 - b. The retiree has been temporarily reemployed to ensure adequate staffing of Critical Government Functions during the governor’s declared state of emergency;
 - c. The reemployed retiree retired prior to March 30, 2020; and
 - d. To the best of the participating employer’s knowledge, the retiree, at the time of retirement:
 - i. Had a “bona fide termination” of all employment and contractual fee-for-services relationships with any participating employer; and
 - ii. Did not have any prearrangement anticipating a post-retirement employment or fee-for-services relationship with any participating employer.
6. Because of the exigent circumstances in which the hiring and onboarding of a qualifying retiree may need to be handled, such a retiree does not need to notify URS of this reemployment. However, by engaging in the reemployment work or service, the retiree shall be deemed to have certified to URS that:
 - a. The retiree has been temporarily reemployed to ensure adequate staffing of Critical Government Functions during the governor’s declared state of emergency;
 - b. The reemployed retiree retired prior to March 30, 2020; and
 - e. The retiree, at the time of retirement:
 - i. Had a “bona fide termination” of all employment and contractual fee-for-services relationships with any participating employer; and
 - ii. Did not have any prearrangement anticipating a post-retirement employment or fee-for-services relationship with any participating employer.

7. A qualifying retiree temporarily reemployed under the Executive Order and this Resolution will continue to receive a monthly retirement allowance, but pursuant to Utah Code Annotated § 49-11-1204 for the period of reemployment, may not receive any retirement related contribution from a participating employer (such as employer 401(k) contributions) or earn additional service credit.
8. Under the direction of the Executive Director, URS shall make policies and procedures appropriate and necessary to implement and administer the suspension of enforcement under the Executive Order and this Resolution.
9. This Resolution shall remain in effect until the date and time the emergency declared in Executive Order 2020-9 is terminated, or until otherwise modified, amended, rescinded, or superseded by the governor of the State of Utah or the Board.

This Resolution takes effect on March 30, 2020, subject to Executive Order 2020-9 being issued and taking effect.

URS shall notify participating employers about this Resolution as soon as possible.