

The Regulations of Connecticut State Agencies are amended by adding section 7-438-1 as follows:

(NEW) Sec. 7-438-1. **Reemployment with state or participating municipality.**

(a) **Definitions.** As used in this section:

- (1) “Member” has the same meaning as provided in section 7-425 of the Connecticut General Statutes.
- (2) “Participating municipality” means “any town, city, borough, school district, regional school district, taxing district, fire district, district department of health, probate district, housing authority, regional work force development board established under section 31-3k of the Connecticut General Statutes, regional emergency telecommunications center, tourism district established under section 10-397 of the Connecticut General Statutes, flood commission or authority established by special act or regional council of governments, which has a department or unit that has employees who participate in the Municipal Employees Retirement System.”
- (3) “Retired” or “Retirement” means the status of a member of the Municipal Employees Retirement System who (i) has terminated his or her municipal employment without any agreement regarding future employment, (ii) is eligible to receive a retirement allowance under any of sections 7-428 through 7-432, inclusive, of the Connecticut General Statutes, (iii) has not been immediately reemployed, and (iv) otherwise satisfies the requirements for a bona fide retirement as determined in accordance with the Internal Revenue Code, Title 26 of the United States Code, as amended from time to time, and any regulations and interpretations thereof.

(b) **Qualified status.** The Municipal Employees Retirement System shall maintain its status as a qualified governmental plan pursuant to the requirements of 26 USC 401(a) and 26 USC 414(d), and nothing in this section shall be construed in a way that would disqualify the plan.

(c) **Reemployment with the state.** Any retired member who accepts employment from the State of Connecticut shall continue to receive his or her retirement allowance while so employed, and, if such member is eligible to participate in the State Employees Retirement System, such member shall be entitled to credit in the state retirement system for the period of such state employment.

(d) **Reemployment with a participating municipality, collection of retirement allowance prohibited.** Except as otherwise provided in this subsection (d), a member who retires from a participating municipality pursuant to sections 7-431 or 7-432 of the Connecticut General Statutes shall not collect a retirement allowance from the Municipal Employees Retirement System while reemployed by the same or another participating municipality. Upon such reemployment, such member’s retirement allowance shall be suspended until such member ceases to be employed

by such participating municipality. Notwithstanding the foregoing, and pursuant to 26 USC 401(a)(36), a member who (1) retired under sections 7-431 or 7-432 of the Connecticut General Statutes and (2) has attained the age of fifty-nine and one-half (59½) may continue to collect his or her retirement allowance while reemployed, provided that at least one of the conditions set forth in subsection (e) of this section is satisfied.

(e) **Reemployment with a participating municipality, collection of retirement allowance permitted.** Subject to the terms of subsection (d) of this section, a member who retires from a participating municipality, and who thereafter is reemployed by the same or another participating municipality, may continue to collect his or her retirement allowance while so reemployed if any of the following conditions is met:

- (1) the member's reemployment is for fewer than twenty hours per week;
- (2) the member's services are rendered for not more than ninety working days in any one calendar year; or
- (3) the member is reemployed in a position that is not eligible to participate in the Municipal Employees Retirement System, and the member does not participate in the Municipal Employees' Retirement System during the period of his or her reemployment.

(f) **Public Safety Positions.** The provisions of section 7-438(c) of the Connecticut General Statutes, as adopted by public act 22-39, effective October 1, 2022, shall not apply to retired members who (i) retired pursuant to sections 7-431 or 7-432 of the Connecticut General Statutes and (ii) have not yet attained the age of fifty-nine and one-half (59½).

(g) **Overpayment of retirement allowance.** Any member who again accepts employment from the same municipality from which the member was retired or any other participating municipality shall reimburse the Municipal Employees' Retirement System for retirement income payments received during any calendar year in which the member received retirement income payments which were prohibited by the Connecticut General Statutes or by this section.

Effective October 1, 2022.

Statement of Purpose: To maintain the tax-qualified status of the Connecticut Municipal Employees Retirement System ("CMERS") by adopting rules regarding the collection of a retirement allowance from CMERS by a member of CMERS who retires and is subsequently reemployed by a participating municipality.

A. The problems, issues, or circumstances that the regulation proposes to address.

Pursuant to section 5-155a(c) of the Connecticut General Statutes, the trustees of the State Employees Retirement Commission ("Retirement Commission") administers CMERS, established by part II of chapter 113 of the Connecticut General Statutes, and each trustee serves as a fiduciary with respect to CMERS and its members.

As expressed by the State Employees Retirement Commission, CMERS is intended to be a qualified governmental plan pursuant to the requirements of Internal Revenue Code, 26 USC 401(a) and 414(d).

Public Act No. 22-39 contains provisions which amend Conn. Gen. Stat. § 7-438 in a way that could violate the requirements of the Internal Revenue Code applicable to CMERS unless the provisions are interpreted in a manner to avoid such violations of the Internal Revenue Code, including improper in-service distributions and impermissible second elections. If CMERS violates the requirements of the Internal Revenue Code, such violation would impact the qualified status of the plan under the Internal Revenue Code. The consequences to plan participants of such violations of the Internal Revenue Code are: (i) all CMERS participants would be taxed on their accrued benefits at the time they become vested in those benefits, and (ii) all future employee contributions would be made on an after-tax basis. Construction of Conn. Gen. Stat. § 7-438 to allow plan disqualification would be an absurd or unworkable result.

- B. Summary of the main provisions of the proposed regulation.** The proposed regulation: (1) defines “member,” “participating municipality,” and “‘retired’ or ‘retirement’” in a manner consistent with state and federal statutes so as to maintain the tax-qualified status of the plan; (2) expresses the tax-qualified status of the plan; (3) permits collection of a retirement allowance during periods of reemployment with the state; (4) maintains the tax-qualified status of CMERS by prohibiting in-service distributions, i.e., the collection of a retirement allowance pursuant to sections 7-431 (early retirement) or 7-432 (disability retirement) of the Connecticut General Statutes by CMERS members who are reemployed by any participating municipality, except where consistent with provisions of the Internal Revenue Code and federal regulations concerning such in-service distributions; (5) maintains the tax-qualified status of CMERS by identifying terms of reemployment under which the receipt of a retirement allowance is permitted: if a member is reemployed for fewer than twenty hours per week, not more than ninety working days in a calendar year, or in a position that is not eligible to participate in CMERS, and the member does not participate in the CMERS during the period of his or her reemployment (this provision clarifies that a second election by the employee is not permitted, because second elections are impermissible pursuant to Internal Revenue Code, 26 USC 414(h)); (6) maintains the tax-qualified status of CMERS by prohibiting in-service distributions for certain public safety officers; and (6) requires repayment of any overpayment of retirement income to a member that results from a member’s reemployment with a participating municipality.

- C. The legal effects of the proposed amendment on existing regulations or other laws.** There is no impact on existing regulations or other laws.