

University Required to Report Hiring of RSA Retirees

The Retirement Systems of Alabama (RSA) administers the pension program for public employees in Alabama. It includes the Employees' Retirement System (ERS), which provides pension benefits for state employees, state police, and, on an elective basis, qualified persons of cities, towns, and quasi-public organizations. It also includes the Teachers' Retirement System (TRS), which similarly provides pension benefits for qualified persons employed by state-supported educational institutions.

As a general rule, Alabama law requires suspension of payment of an RSA pension if the retiree recipient becomes employed by an RSA participating employer. An retiree receiving an RSA pension may, however, work for an RSA participating employer without suspension of the pension if he/she is not employed in a permanent full-time capacity and does not earn in excess of an annual earnings limit. That limit is \$23,000 in 2013, with annual increases in future years based on increases in the Consumer Price Index. In addition, the general suspension rule does not apply in those cases where the RSA retiree works as an independent contractor for an RSA participating employer.

The Alabama Attorney General has recently opined that state law imposes on participating RSA employers, including the University, the duty to report to RSA the name of any ERS or TRS retiree who performs work for the University, along with other information needed to allow the RSA to apply the pension-suspension provisions appropriately. An initial report of the names of all RSA retirees currently performing services for the University, along with information regarding performance of their duties and their compensation, is to be made by September 30, 2013. In the future, the University will be required to provide this information as soon as possible but in any event no later than 30 days after it engages a retiree to work for it.

It appears likely that the RSA will look very closely at claims of an exemption from pension suspension based on the retiree being an independent contractor. The University uses the standard Contract for Professional Services to hire independent contractors. However, the use of that form by the University does not guarantee that the RSA will conclude that the individual is an independent contractor.