

Office of Human Resources

***404 Re-Employment of Retirees and Use of  
Independent Contractors***

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**Georgia Department of Human Services  
Human Resources Policy #404**

**Re-Employment of Retirees and Use of Independent Contractors**

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**References:** Federal Law U.S.C. Title 26 – Internal Revenue Code Federal Regulation 26 CFR 31 – Employment Taxes  
O.C.G.A. 47-2-110 – Retirement Allowance upon Re-employment Add reference to policy letter that covers retiree rehires.

The Department of Human Services (DHS) recognizes that there are legitimate reasons for re-employment of retired State employees and for contracting for their services. It is critical, however, that the use of retirees as employees or independent contractors fully comply with Federal and State laws and serve Departmental interests.

If a retiree's services are desired after retirement, careful consideration must be given to the nature of the desired services before furthering a relationship with the retiree. A review should be conducted to determine if the services should be provided as an employee or contractor. All decisions must be based on the needs of the agency.

## Section A: ERS Restrictions

1. Georgia Law permits Employees' Retirement System (ERS) retirees to be reemployed by ERS-covered employers (including DHS) for up to 1,040 hours per calendar year. If a retiree works more than 1,040 hours in a calendar year, DHS is required to notify ERS. The retiree's retirement benefits are then suspended for the remainder of the calendar year.
2. The 1,040-hour restriction does not apply to ERS retirees who are completing projects for DHS as independent contractors rather than reemployed employees.

## Section B: Re-Employment

1. The decision to reemploy a retiree must be based strictly on the identification of important Departmental interests to be served by such re-employment, and a determination that these interests are best served by re-employment of the retiree.

Except as provided below, a retiree should not be reemployed to continue to perform the job the retiree performed before retirement.

Re-employment of a retiree is not a substitute for effective workforce planning, which should occur well in advance of retirement. Planning should occur to ensure that an acting or permanent replacement for the retiree is available at, or shortly after, the point of retirement.

It is permissible for a retiree to be reemployed to provide short-term assistance (not to exceed a total of 1,040 hours) in the transition of responsibility from the retiree to the retiree's replacement, in a high-level management or highly specialized position.

2. Reemployed retirees are "hourly" employees. They are FLSA non-exempt regardless of their assigned job duties and responsibilities.
3. Employees receiving service, disability, or involuntary separation benefits under ERS are not entitled to earn annual or sick leave.
4. If the re-employment of a retiree is expected to last beyond six (6) months, the retiree's re-employment should be on a half-time or other part-time basis, so that the 1,040-hour maximum is not exhausted prematurely.
5. Under no circumstances can a retired employee be permitted to be reemployed for more than 1,040 hours in a calendar year.
6. Under no circumstances can a retiree serving as an independent contractor, after the conclusion of a contract, perform services like those performed under the contract as an employee of the Department.

## Section C: IRS Restrictions

1. It is a violation of Internal Revenue Service (IRS) Law to enter into a contract with an individual to perform services when the relationship with the individual is actually one of employment, as defined by IRS regulations. Such a practice creates IRS liability for the Department, including payment of back taxes, fines, and interest, and results in the unintended application of several employment laws (workers' compensation, unemployment insurance, etc.).

## Section D: Contracting

1. In all instances when the Department contracts with individuals, including retirees, to perform certain services, the relationship must be genuinely contractual, not employment, in nature.
2. All contracts with individuals are to be reviewed by OHR to ensure that the contract does not actually present an employment relationship.
  - a. The Determining Independent Contractor Status Questionnaire Form must be completed by the DHS organizational unit desiring the contract and reviewed by OHR prior to execution of the contract and performance of any services by the contractor.
3. An independent contract relationship should not be established for the purpose of accomplishing work that is integral to DHS' purpose and function, ordinarily performed by employees or for which there is an ongoing need.
4. Independent contracts can be used to accomplish specific, time-limited projects that are beyond the scope of existing employee resources, and which call for a specific result or "deliverable" to be accomplished by the contractor. Workspace, supplies, equipment, etc. should not be provided to an independent contractor.
5. A retiree cannot be shifted from re-employment status to contract status in the absence of a true change in the fundamental nature of the relationship.

6. A retiree cannot be shifted from contract status to re-employment status and continue to perform services like those performed under the contract. (Refer to item #6 in Section B.)

## **Section E: Conflict of Interest**

1. All decisions on re-employment of retirees and use of independent contractors must be objective, impartial, and well documented.
2. A retiree, by definition, has had a long-term relationship with the organization. Re-employment of a retiree or establishment of a contract with a retiree may, under certain circumstances, create a perception of preferential treatment or conflict of interest.
3. Everyone involved with making decisions on re-employment or contracting with retirees is responsible and accountable for ensuring that the public interest is served, and that preferential treatment and conflict of interest do not occur.

For additional information or assistance, please contact your local Human Resources Representative.

## **404 A1 Determining Independent Contractor Status Questionnaire**