



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

DAVID A. PATERSON  
GOVERNOR

DENNIS P. WHALEN  
DIRECTOR OF STATE OPERATIONS

**MEMORANDUM**

TO: Heads of State Agencies and Public Authorities

FROM: Dennis P. Whalen

RE: Retirement and Social Security Law §211 Waivers

DATE: April 1, 2009

As you are aware, Retirement and Social Security Law Section 211 allows the State and localities that hire retired public employees to seek a waiver ("a "211 waiver") from the State Civil Service Commission (CSC) to allow such retirees to continue to receive their New York State or local government pensions after they return to public employment. This memo addresses the criteria under which State agencies and public authorities should apply for such waivers, and the need to strictly limit such applications in light of the present economic situation.

In certain limited circumstances, 211 waivers play an important function in recruiting and retaining essential employees by authorizing the employment of a public retiree for a limited period of time when no non-retiree is comparably qualified to fill the position. The Civil Service Commission announced at its March meeting that given the significant change in the available labor pool in recent months, it will require documentation of a nearly contemporaneous recruitment effort to satisfy the statutory requirement that there are not non-retirees available for appointment.

Legislation enacted last year, Chapter 640 of the Laws of 2008, sought to restrict the abuse of 211 waivers by strengthening and clarifying the criteria under which such waivers should be granted. That statute includes a "grandfather" clause, which allows current recipients of 211 waivers to apply for continuations of such waivers under the prior legal standard. That clause, however, does not deprive agencies of the discretion to seek, or not to seek, a waiver for a particular employee. Simply because an agency will be able to meet the statutory criteria does not mean that a waiver is appropriate.

In light of the foregoing, please employ the following principles when deciding to apply for a 211 waiver:

1. 211 waivers generally should not be sought except in the areas of law enforcement (e.g., investigators) or public health (e.g., nurses and psychologists). Waivers in these areas are appropriate only for those who are directly engaged in professional services related to safety or health, not for administrative personnel.
2. 211 waivers generally should not be sought for high-level, executive personnel. If an agency believes an exception to this rule is necessary to protect public safety or for other exceptional circumstances, the agency shall set forth the reasons for such exception in writing to the Executive Chamber at least 30 days prior to the time it intends to submit an application for the waiver. An exception may be granted, in the discretion of the Executive Chamber, only if the agency can show with specificity that: (1) hiring or retaining such individual is necessary for public safety; (2) the agency will be unable to recruit or retain such individual absent a waiver; and (3) the agency has engaged in extensive recruitment efforts to identify a comparably qualified non-retiree for the position. Approval by the Executive Chamber will allow for submission of an application; the Civil Service Commission will still need to make its own determination as to whether the application meets the requisite statutory criteria.
3. Even in those instances where a 211 waiver may be sought in accordance with this memorandum, agencies should do so with care. In particular, agencies must continue to engage in outreach and recruitment efforts to determine if the positions at issue may be filled with qualified non-retirees.
4. The restrictions in this memorandum apply fully to those instances where an employee is currently the subject of a 211 waiver which is set to expire. If a 211 waiver is to expire shortly, and the agency will not be able to recruit a replacement in a timely fashion, it may seek a limited waiver of up to four months to allow for recruitment of a replacement with the prior approval of the Executive Chamber. If such recruitment is unsuccessful, the agency may only seek a waiver for such individual in accordance with paragraph 2.

Any questions about the application of these standards should be directed to your Deputy Secretary.