

**COUNTY BOARD OF HEALTH
POLICY # HR-03101
RE-EMPLOYMENT OF RETIREES AND
USE OF FORMER EMPLOYEES AS INDEPENDENT CONTRACTORS OR
VENDORS POLICY**

Approval:		1/7/2020
	Pamela Logan, District Health Director	Date



Public Health
Prevent. Promote. Protect.

1.0 PURPOSE

This policy contains guidelines for the legitimate re-hire and contracting of retired employees.

2.0 AUTHORITY – The County Board of Health (CBOH) Re-employment of Retirees and Use of Independent Contractors or Vendors Policy is published under the authority of CBOH and in compliance with the following:

- 2.1** Official Code of Georgia Annotated (OCGA), Sections: O.C.G.A. §47-2-110 - Retirement Allowance upon Re-employment
- 2.2** Federal Law U.S.C. Title 26 - Internal Revenue Code
- 2.3** Federal Regulation 26 CFR 31 - Employment Taxes
- 2.4** Rules of the State Personnel Board

3.0 SCOPE

This policy applies to employees of the County Board of Health, including District staff in program positions.

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4.0 POLICY

It is the policy of the County Board of Health (CBOH) to recognize that there are legitimate reasons for re-employment of retired employees and there are issues related to contracting with former employees for their services.

5.0 DEFINITIONS

- 5.1 CBOH – County Board of Health
- 5.2 HR – Human Resources
- 5.3 ERS - Employees' Retirement System
- 5.4 IRS - Internal Revenue Service
- 5.5 **Independent Contractor** - as defined by the IRS:

People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax.

If you are an independent contractor, you are self-employed. To find out what your tax obligations are, visit the Self-Employed Tax Center (<http://www.irs.gov/Individuals/Self-Employed>).

You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

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If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor and your earnings are generally not subject to Self-Employment Tax (<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Self-Employment-Tax-Social-Security-and-Medicare-Taxes>). However, your earnings as an employee may be subject to FICA (Social Security tax and Medicare) and income tax withholding.

For more information on determining whether you are an independent contractor or an employee, refer to the section on Independent Contractors or Employees (<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Self-Employed-or-Employee>)

6.0 RESPONSIBILITIES

- 6.1 Human Resources is responsible for issuing and updating procedures to implement this policy.
- 6.2 Human Resources is responsible for ensuring compliance with this policy.

7.0 PROCEDURES

7.1 PROCESS

7.1.1 If a retiree's services are desired after retirement, careful consideration must be given to the nature of the desired services before entering into a further 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.

7.2 ERS RESTRICTIONS

7.2.1 O.C.G.A. 47-2-110 requires that no agreement to return to employment services can exist between the CBOH and the retiree prior to the retirement date.

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7.2.2 O.C.G.A. 47-2-110 (c)(4) permits Employees' Retirement System (ERS) retirees to be re-employed by ERS-covered employers (including CBOH) for up to 1,040 hours per calendar year. The Human Resources department is required to notify ERS within 30 days of hire and provide the name, demographic information, and number of hours the employee is expected to work annually.

7.2.3 If a retiree works more than 1,040 hours in a calendar year, Human Resources must notify ERS as soon as the information is available and the retiree's retirement benefits are suspended for the remainder of the calendar year.

7.2.4 The CBOH is not allowed to hire a retiree within two consecutive calendar months of their effective date of retirement. Any return to employment with the CBOH, including service as or for an independent contractor, within two consecutive months of the effective date of retirement shall nullify the application for retirement.

7.2.5 The 1,040-hour restriction does not apply to ERS retirees who are completing projects for CBOH as independent contractors or vendors rather than re-employed employees.

7.3 RE-EMPLOYMENT

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

7.3.2 Re-employed retirees are "hourly" employees. They are FLSA non-exempt regardless of their assigned job duties and responsibilities.

7.3.3 Employees receiving service, disability or involuntary separation benefits under ERS are not entitled to earn annual or sick leave.

7.3.4 Under no circumstances can a retired employee be permitted to be re-employed for more than 1,040 hours in a calendar year.

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7.3.5 Under no circumstances can a retiree serving as an independent contractor or vendor, subsequent to the conclusion of a contract or purchase, perform services similar to those performed as an employee of the agency.

7.4 IRS RESTRICTIONS

It is a violation of Internal Revenue Service (IRS) Law to enter into a contract or purchase order 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 CBOH, including payment of back taxes, fines, and interest, and results in the unintended application of several employment laws (workers' compensation, unemployment insurance, etc.)

7.5 CONTRACTING OR PURCHASING SERVICES

7.5.1 In all instances when the CBOH contracts or purchases with Individuals, including retirees, to perform certain services, the relationship must be genuinely contractual, not employment, in nature.

7.5.2 All contracts or purchase orders with individuals are to be reviewed by the District Health Director or designee to ensure that the contract does not actually present an employment relationship.

7.5.3 An independent contractor-vendor relationship should not be established for the purpose of accomplishing work that is ordinarily performed by employees, is integral to the agency's purposes and function, or for which there is an ongoing need.

7.5.4 Independent contracts or purchase orders 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 or vendor. Work space, supplies, equipment, etc. should not be provided to an independent contractor or vendor.

7.5.5 A retiree cannot be shifted from employment status to contract or vendor status in the absence of a true change in the fundamental nature of the relationship.

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7.5.6 A retiree cannot be shifted from contract or vendor status to employment status and continue to perform services similar to those performed under the contract or purchase order.

7.6 CONFLICT OF INTEREST

7.6.1 All decisions on re-employment of retirees and use of independent contractors must be objective, impartial and well documented.

7.6.2 Because a retiree by definition has had a long-term relationship with the organization, re-employment of a retiree or establishment of a contract or purchase order with a retiree may, under certain circumstances, create a perception of preferential treatment or conflict of interest.

7.6.3 Everyone involved with making decisions on re-employment and contracting or purchasing services 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.

8.0 REVISION HISTORY

REVISION #	REVISION DATE	REVISION COMMENTS
0	October 23, 2019	Initial Use

9.0 RELATED FORMS

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