**Section 1600.200 Definition of "Employee" for SURS Participation**

Purpose and Application. As mandated by Section 15-107(k) of the Code, this Section provides rules for determining whether an individual is an "employee," as defined under Section 15-107 of the Code, who is eligible to participate in a SURS retirement program. This Section shall be effective for employment beginning on or after January 1, 2023. Certifications of employee status for employment that began prior to January 1, 2023, shall be determined under a reasonable and good faith interpretation of Section 15-107 of the Code.

a) General Definition. "Employee" means *any member of the educational, administrative, secretarial, clerical, mechanical, labor or other staff of an employer* who satisfies either the "permanent and continuous standard" under subsection (a)(1) or the "minimum continuous duration standard" under subsection (a)(2) and meets the "payroll standard" under subsection (a)(3). [40 ILCS 5/15-107(a)]

1) Permanent and Continuous Standard. An individual satisfies this subsection (a)(1) if:

A) as of the date of commencement of employment, the position is permanent, that is, it is intended to continue indefinitely in the absence of further action by the employer in the normal course of business or is anticipated for automatic reappointment upon expiration of the appointment term; and

B) the position is continuous as described in subsection (a)(4).

2) Minimum Continuous Duration Standard.

A) An individual satisfies the conditions of this subsection (a)(2) if:

i) as of the date of commencement of employment, the position requires services that are expected to be rendered over a fixed duration of at least 4 months (or 16 weeks) or one academic term, whichever is less, measured from the employment commencement date; and

ii) the position is continuous as described in subsection (a)(4).

B) For purposes of subsection (a)(2)(A), "academic term" means a portion of the academic year during which the employer holds classes that is no shorter than 3 months (or 12 weeks) in duration. If an employer is not an educational institution that holds classes, then the academic term shall be 4 months (or 16 weeks) for purposes of subsection (a)(2)(A). If services commence during a period that is not an academic term (such as a summer session) and, pursuant to a contractual commitment, are expected to extend into the following academic term, the period prior to the academic term is also counted for purposes of meeting this standard.

C) Notwithstanding subsection (a)(2)(B), services related to accelerated courses that are taught during a portion of the academic term but carry the same contact hour and credit hour loads as the unaccelerated course taught over the full academic term shall be deemed to be rendered over an academic term.

3) Payroll Standard. An individual satisfies this subsection (a)(3) if the person:

A) receives payment for personal services:

i) on a warrant issued pursuant to a payroll voucher certified by an employer and drawn by the State Comptroller upon the State Treasurer; or

ii) by an employer upon trust, federal or other funds; or

B) is on a leave of absence without pay.

4) Continuous Employment. To be continuous, a position must not be irregular, intermittent or temporary. A position must meet all the applicable requirements below to be continuous, depending on whether it is a faculty position or a non-faculty staff position:

A) Continuous Faculty Position. "Faculty" for purposes of this subsection (a)(4)(A) means an individual who has an academic appointment at an educational institution (e.g., professor, associate professor, assistant professor, adjunct faculty or professor, professor of practice, instructor, lecturer).

i) The faculty position must customarily require services to be rendered on a regularly scheduled basis that the employer deems necessary to fulfill the educational objectives of the appointment.

ii) The faculty position shall be deemed to be irregular or intermittent if the appointment requires less than 10% of a full-time faculty load for the semester. The full-time faculty load shall be defined by employer policy that is consistent with the definition of a "full-time employee" under 26 U.S.C. 4980H and regulations thereunder promulgated by the IRS.

iii) The faculty position is not temporary. A position is temporary if the individual is hired by the employer to help meet a short-term demand (e.g., completing a project of specified short-term duration, teaching a temporary course, teaching only during summer sessions, filling a position temporarily vacated by an employee who is sick or on a leave of absence, if funding for the position is temporary and renewal of that funding is not customarily sought from year to year).

B) Continuous Non-Faculty Staff Positions. "Non-faculty staff" for purposes of this subsection (a)(4)(B) means an individual who does not have an academic appointment at an educational institution (e.g., academic professionals, research scientists, technicians, clerical staff, mechanical staff, information technology staff, housekeeping/janitorial staff).

i) The non-faculty staff position customarily requires services to be rendered on at least a 10% of full-time equivalent basis as defined by employer policy that is consistent with the definition of "full-time employee" under 26 U.S.C. 4980H and regulations thereunder promulgated by the IRS.

ii) The non-faculty staff position is not temporary. A position is temporary if the individual is hired by the employer to help meet a short-term demand (e.g., completing a project of specified short-term duration, filling a position temporarily vacated by an employee who is sick or on a leave of absence, if funding for the position is temporary and renewal for that funding is not customarily sought from year to year).

iii) The non-faculty staff position has expectations of work with a particular pattern or duration. Specifically:

• the services in the position are not rendered solely on an "on-call" or "as-needed" basis (e.g., on-call shuttle drivers, extra-help employees, tutors, and driving instructors); and

• the position does not fall within the scope of a "seasonal worker," which means a worker who performs labor or services on a seasonal basis or retail workers employed exclusively during holiday seasons as defined under 26 CFR 54.4980H-1(a)(39) or 29 CFR 500.20(s)(1).

b) Specific Exclusions.

1) Notwithstanding the foregoing and as permitted under Sections 15-107(a)(1)-(7) of the Code, an individual is not an employee under this Section if the individual:

A) *is a student enrolled in and regularly attending classes in a college or university which is an employer, and is employed on a temporary basis at less than full time;*

B) *is currently receiving a retirement annuity or a disability retirement annuity under Section 15-153.2* of the Code *from this System;*

C) *is on a military leave of absence;*

D) *is eligible to participate in the Federal Civil Service Retirement System and is currently making contributions to that system based upon earnings paid by an employer;*

E) *is on leave of absence without pay for more than 60 days immediately following termination of disability benefits under* Article 15 of the Code;

F) *is hired after June 30, 1979 as a public service employment program participant under the Federal Comprehensive Employment and Training Act and receives earnings in whole or in part from funds provided under that Act; or*

G) *is employed on or after July 1, 1991 to perform services that are excluded by subdivision (a)(7)(f) or (a)(19) of Section 210 of the federal Social Security Act from the definition of employment given in that Section (42 U.S.C. 410).* [40 ILCS 5/15-107(a)]

2) In accordance with Section 15-107(a)(7) of the Code, an individual who *is employed on or after July 1, 1991, to perform services that are excluded by subdivision (a)(7)(F) or (a)(19)* (concerning non-immigrant visa holders) *of Section 210 of the Social Security Act from the definition of employment given in that Section (42 U.S.C. 410)* shall not be an employee under Section 15-107. However, an individual who was excluded from employee status due to Section 210(a)(19) of the Social Security Act may become an employee under this Section effective as of the date the individual becomes a Lawful Permanent Resident, meets the Substantial Presence Test under 26 CFR 301.7701(b)-1(c), or otherwise becomes a U.S. person for federal income tax purposes. [40 ILCS 5/15-107(a)]

c) Certification of Employee Status. An employer shall certify any individual who meets the applicable eligibility conditions set forth under this Section as an employee within the meaning of Section 15-107 by submitting a Report of Status to SURS. An employer shall determine whether an individual is an employee under this Section, or remains an employee under this Section, upon the occurrence and re-occurrence of any of the following events:

1) initial hire;

2) transfer to a different position that is substantially different in character or duration (e.g., from a faculty to a non-faculty staff position); or

3) rehire after termination from employment.

d) Concurrent Employment. If an individual is concurrently employed in more than one position with the same employer, and at least one position qualifies for employee status under Section 15-107 of the Code as interpreted under this Section, then the other position or positions shall also be deemed as qualifying for employee status during the duration of the qualifying employment.

e) Reservation of Rights. SURS reserves the right to determine whether an individual is an employee within the meaning of Section 15-107 of the Code and this Section, including whether a position is irregular, intermittent, or temporary under subsection (a)(4).

f) Appeals. An individual who is adversely affected by a determination made under this Section may file an appeal under Section 1600.500. An employer that is adversely affected by a determination made under this Section may file an appeal under Section 1600.510. If an individual and an employer both bring appeals concerning the same determination of employee status, then SURS may consolidate the matters to be heard before the Claims Panel under Section 1600.500.

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