

Public Records Request #2884

The following materials have been gathered in response to public records request #2884. These materials include:

- Email Correspondence

This information was provided as a response to a public records request on 12/18/19 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

Further Information

For further information about this request or the Citywide Records Program, please contact:

Cheyenne Flotree
Citywide Records Program Manager
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
Cheyenne.Flotree@charlottenc.gov

Amelia Knight
Public Records Specialist
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
Amelia.Knight@charlottenc.gov

The attachments to the following emails were removed pursuant to N.C.G.S § 160A-168

Personnel Records:

- CMPD Retirement Projections
- Confidential Projections

From: Simpson, Sheila
Sent: Wednesday, February 13, 2019 9:03 AM
To: Putney, Kerr; Foster, Veronica (Vicki); Gallant, Douglas; Emmanuel, Kamella
Subject: CMPD Retirement Projection

Good morning.

Attached is a report that you can use to help identify retirement eligibility.

There are four dates:

1. Full Retirement without sick leave
2. Full Retirement with projected sick leave
3. Reduced Benefit (a.k.a. Early Retirement) without sick leave
4. Reduced Benefit (a.k.a. Early Retirement) with projected sick leave.

Please use this information to help you think about succession planning and employee development.

Sheila

From: Love, Stephanie
Sent: Wednesday, August 28, 2019 8:43 AM
To: Simpson, Sheila
Subject: RE: Confidential Projection

Follow Up Flag: Follow up
Flag Status: Flagged

Sheila,

I've attached the updated document with the information you requested. My additions are highlighted. If there's anything else you were looking for or would like clarification on please let me know. I've also attached the most current RTW Guidance should you need that handy.

Thanks,



Stephanie Love / HR Analyst, Retirement
HUMAN RESOURCES DEPARTMENT
700 East 4th Street / Suite 200 / Charlotte, NC 28202
P: Ex. 704-336-5196 / F: 704-632-8282 www.charlottenc.gov

From: Simpson, Sheila
Sent: Tuesday, August 27, 2019 7:32 PM
To: Love, Stephanie <Stephanie.Love@ci.charlotte.nc.us>
Subject: Confidential Projection

Stephanie,

Please review and edit for accuracy.

Also, add the vacation payout information and the FAS formula.

Any other key information that is needed, please let me know.

Thanks,

Sheila

From: Tufano, Robert
Sent: Tuesday, October 8, 2019 4:41 PM
To: Simpson, Sheila
Subject: FW: [EXT] Fwd: the story will mention this law.....

FYI

Rob Tufano
Office of the Chief
Charlotte-Mecklenburg Police Department
p. 704-301-8605 | www.cmpd.org
[CMPD Newsroom](#)



From: Morrill, Jim <jmorrill@charlotteobserver.com>
Sent: Tuesday, October 8, 2019 4:15 PM
To: Tufano, Robert <rtufano@cmpd.org>
Subject: [EXT] Fwd: the story will mention this law.....

fyi comment?

----- Forwarded message -----

From: **Morrill, Jim** <jmorrill@charlotteobserver.com>
Date: Tue, Oct 8, 2019 at 3:56 PM
Subject: the story will mention this law.....
To: Schneider, Jason <Jason.Schneider@ci.charlotte.nc.us>

GS 128-21(19)

"Retirement" under this Article shall mean the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to return to service. A retirement allowance under the provisions of this Article may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time, temporary, substitute, or contractor work, at any time during the same month immediately following the effective first day of retirement.

--

Jim Morrill
Political writer
The Charlotte Observer

704.358.5059 o
704.302.6359 c

--

Jim Morrill
Political writer
The Charlotte Observer

704.358.5059 o
704.302.6359 c

From: Kelly, Brent
Sent: Tuesday, October 8, 2019 5:27 PM
To: Baker, Patrick
Subject: the story will mention this law.....

GS 128-21(19)

"Retirement" under this Article shall mean the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to return to service. A retirement allowance under the provisions of this Article may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time, temporary, substitute, or contractor work, at any time during the same month immediately following the effective first day of retirement.

--

Jim Morrill
Political writer
The Charlotte Observer

704.358.5059 o
704.302.6359 c

From: Simpson, Sheila
Sent: Wednesday, October 9, 2019 8:15 AM
To: Elkins, Susan
Subject: FW: [EXT] Retirement Statute

Can you print for me?

From: Hope Root [mailto:hroot13@gmail.com]
Sent: Tuesday, October 08, 2019 11:32 PM
To: Baker, Patrick <Patrick.Baker@ci.charlotte.nc.us>; Simpson, Sheila <ssimpson@ci.charlotte.nc.us>
Cc: Newbold, Mark <mnewbold@cmpd.org>
Subject: [EXT] Retirement Statute

EXTERNAL EMAIL: This email originated from the Internet. Do not click any images, links or open any attachments unless you recognize and trust the sender and know the content is safe. Please click the Phish Alert button to forward the email to Bad.Mail.

Patrick and Sheila -

I have looked at the retirement statute, and my opinion is that the statute does not prevent an employee from expressing an intent to return to work for the city prior to retirement. Here is my analysis:

Retirement is defined as "the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to *return to service*. ... In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time ... at any time during the same month immediately following the effective first day of retirement." [NCGS 128-21(19)] (emphasis added)

It is only with the intent or agreement to *return to service* that is prohibited.

Service means service as an employee as described in subdivision (10) of this section. [NCGS 128-21(22)]

Subsection 10 defines employee as a person who is *regularly employed* in the service of and compensated by an employer (the city meets the definition of employer). [NCGS 128-21(10)]

Given the statutory interpretation so far, the statutory prohibition for receiving retirement is the expression of the intent or agreement to return as a "regularly employed" employee.

Regularly employed is defined as employment in a position for which duties require not less than 1,000 hours in a calendar year. [NCGS 128-21(18a)]

Final analysis: The statute only prohibits the payment of monthly retirement benefits to an employee who has the intent or agreement to return to work for a local government employer as a regularly employed employee, which means to work more than 1,000 hours in a calendar year. Therefore, if an employee intends, or has an agreement, to come back to work for an employer in a position that is less than 1,000 hours, he is not intending to come back as a regularly employed employee, and can continue to receive retirement benefits as long as he did not work at all for the employer during the same month immediately following the first day of retirement.

This is consistent with what the retirement system says. Below is a link to the LGRS retirement system handbook that explains the limitation:

<https://www.myncretirement.com/retirees/benefits/return-work-laws#violation-of-return-to-work-laws;-benefit-stopped>

The statute is not about the "intent, express or implied" to return to work; rather, it is about the intent to return to work as a regularly employed employee (over 1,000 hours per calendar year).

I hope this helps. I have looked at the other retirement statutes, and I do not see any other limitation.

I will be in the office tomorrow no later than 10:30-11:00. I have an appointment to meet a planner in Rock Hill re: a variance petition affecting our property. I should be available by cell phone as soon as that meeting is over, hopefully by 9:00. Shoot me a text if you want me to give you a call.

Hope

From: Simpson, Sheila
Sent: Wednesday, October 9, 2019 12:10 PM
To: Emmanuel, Kamella
Subject: Fwd: [EXT] Retirement Statute

What we discussed.

Sent from my iPhone

Begin forwarded message:

From: Hope Root <hroot13@gmail.com>
Date: October 8, 2019 at 11:31:47 PM EDT
To: patrick.baker@charlottenc.gov, ssimpson@charlottenc.gov
Cc: mnewbold@cmpd.org
Subject: [EXT] Retirement Statute

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Hope

From: Simpson, Sheila
Sent: Wednesday, October 9, 2019 10:52 AM
To: Hope Root
Cc: Baker, Patrick; Newbold, Mark
Subject: Re: [EXT] Retirement Statute

Patrick, I don't have your cell number. Please call me when you can. 704 651-7066.

Sent from my iPhone

On Oct 8, 2019, at 11:32 PM, Hope Root <hroot13@gmail.com> wrote:

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Hope

From: ssimpson@ci.charlotte.nc.us
Sent: Wednesday, October 9, 2019 12:10 PM
To: Emmanuel, Kamella
Subject: Fwd: [EXT] Retirement Statute

What we discussed.

Sent from my iPhone

Begin forwarded message:

From: Hope Root <hroot13@gmail.com>
Date: October 8, 2019 at 11:31:47 PM EDT
To: patrick.baker@charlottenc.gov, ssimpson@charlottenc.gov
Cc: mnewbold@cmpd.org
Subject: [EXT] Retirement Statute

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Hope

From: Emmanuel, Kamella
Sent: Wednesday, October 9, 2019 12:16 PM
To: Simpson, Sheila
Subject: Re: [EXT] Retirement Statute

Noted. Thank you.

Regards,

Kamella Emmanuel, IPMA SCP
Administrative Services Manager
Charlotte-Mecklenburg Police Department
[601 East Trade Street, 3rd Floor](#)
P: Ex. [\(704\) 336-8884](#)
Kamella.Emmanuel@cmpd.org

Sent from my iPhone

On Oct 9, 2019, at 12:09 PM, Simpson, Sheila <ssimpson@ci.charlotte.nc.us> wrote:

What we discussed.

Sent from my iPhone

Begin forwarded message:

From: Hope Root <hroot13@gmail.com>
Date: October 8, 2019 at 11:31:47 PM EDT
To: patrick.baker@charlottenc.gov, ssimpson@charlottenc.gov
Cc: mnewbold@cmpd.org
Subject: [EXT] Retirement Statute

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Hope

From: Root, Hope
Sent: Wednesday, October 9, 2019 12:26 PM
To: Baker, Patrick; Simpson, Sheila
Cc: Newbold, Mark; Putney, Kerr
Subject: Retirement statute re: return to work

Patrick and Sheila – I have looked at the retirement statutes, and below is my analysis. Note that this is slightly different than the one I sent last night because I included the temporary employment language in this analysis. The bottom line is that an employee can agree before he retires to come back after a one-month separation as long as he is returning to a position that is less than 1,000 hours or is considered temporary employment.

Retirement is defined as "the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to *return to service*. ... In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time ... at any time during the same month immediately following the effective first day of retirement." [NCGS 128-21(19)] (emphasis added)

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Regularly employed is defined as employment in a position for which duties require not less than 1,000 hours in a calendar year and does not include *temporary employment*. [NCGS 128-21(18a)]

Temporary employment is employment for a limited term, in no case to exceed 12 consecutive months on a nonrecurring basis. [NCGS 128-21(22b)]

Final analysis: The statute only prohibits the payment of monthly benefits to an employee who has the intent or agreement to return to work for a local government employer as a regularly employed employee, which does not include positions that require less than 1,000 hours in a year or temporary employment for a limited term. Therefore, if an employee intends, or has an agreement, to come back to work for an employer in a position that is less than 1,000 hours or temporary employment for a limited time, he is not intending to come back as a regularly employed employee, and can continue to receive retirement benefits as long as he did not work at all for the employer during the same month immediately following the first day of retirement.

This is consistent with what the retirement system says. Below is a link to the LGRS LEO retirement system handbook that explains return to work (see page 27):

<https://files.nc.gov/retire/documents/files/LGERS-LEOHandbook.pdf>

The statute is not about the "intent, express or implied" to return to work; rather, it is about the intent to return to work as a regularly employed employee.

Please let me know if you have any questions or would like to discuss further.

Hope A. Root
SENIOR DEPUTY CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY

PH: 704.336.5804

FAX: 704.632.8348

hroot@charlottenc.gov

www.charlottenc.gov

From: Simpson, Sheila
Sent: Wednesday, October 9, 2019 12:47 PM
To: Emmanuel, Kamella
Subject: Fwd: Retirement statute re: return to work

The updated analysis

Sent from my iPhone

Begin forwarded message:

From: "Root, Hope" <hroot@ci.charlotte.nc.us>
Date: October 9, 2019 at 12:25:53 PM EDT
To: "Baker, Patrick" <Patrick.Baker@ci.charlotte.nc.us>, "Simpson, Sheila" <ssimpson@ci.charlotte.nc.us>
Cc: "Newbold, Mark" <mnewbold@cmpd.org>, "Putney, Kerr" <kputney@cmpd.org>
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OFFICE OF THE CITY ATTORNEY
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hroot@charlottenc.gov
www.charlottenc.gov

From: ssimpson@ci.charlotte.nc.us
Sent: Wednesday, October 9, 2019 12:47 PM
To: Emmanuel, Kamella
Subject: Fwd: Retirement statute re: return to work

The updated analysis

Sent from my iPhone

Begin forwarded message:

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To: "Baker, Patrick" <Patrick.Baker@ci.charlotte.nc.us>, "Simpson, Sheila" <ssimpson@ci.charlotte.nc.us>
Cc: "Newbold, Mark" <mnewbold@cmpd.org>, "Putney, Kerr" <kputney@cmpd.org>
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Temporary employment is employment for a limited term, in no case to exceed 12 consecutive months on a nonrecurring basis. [NCGS 128-21(22b)]

Final analysis: The statute only prohibits the payment of monthly benefits to an employee who has the intent or agreement to return to work for a local government employer as a regularly employed employee, which does not include positions that require less than 1,000 hours in a

year or temporary employment for a limited term. Therefore, if an employee intends, or has an agreement, to come back to work for an employer in a position that is less than 1,000 hours or temporary employment for a limited time, he is not intending to come back as a regularly employed employee, and can continue to receive retirement benefits as long as he did not work at all for the employer during the same month immediately following the first day of retirement.

This is consistent with what the retirement system says. Below is a link to the LGRS LEO retirement system handbook that explains return to work (see page 27):

<https://files.nc.gov/retire/documents/files/LGERS-LEOHandbook.pdf>

The statute is not about the "intent, express or implied" to return to work; rather, it is about the intent to return to work as a regularly employed employee.

Please let me know if you have any questions or would like to discuss further.

Hope A. Root
SENIOR DEPUTY CITY ATTORNEY

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hroot@charlottenc.gov
www.charlottenc.gov

From: Baker, Patrick
Sent: Wednesday, October 9, 2019 2:09 PM
To: Root, Hope; Simpson, Sheila
Cc: Newbold, Mark; Putney, Kerr; Jones, Marcus; Joy-Hogg, Sabrina; Schneider, Jason; Clampitt, Brittany; Kelly, Brent
Subject: RE: Retirement statute re: return to work

Thank you Hope for all of your hard work late last night and this morning on this important matter.

As of this moment, we have not been able to talk to an attorney or representative for the retirement system. But to boil down Hope's excellent analysis into a couple of facts, the plain reading of the applicable statutory provisions and the retirement system's member handbook is as follows:

- Chief Putney cannot retire and subsequently returning to service with the City of Charlotte as a regular employee.
- Chief Putney can retire and subsequently returning to service with the City of Charlotte as a **temporary employee**.
- Upon his return to the City in April, Chief Putney will be a **temporary employee** of the City and will be subject to the retirement system's "1000 Hour Rule." (which is spelled out in the retirement system's Member Handbook on page 28)

Hoping to get somebody to talk to us before we/I speak to the media. Will keep you in the loop.

Patrick

From: Root, Hope
Sent: Wednesday, October 9, 2019 12:26 PM
To: Baker, Patrick <Patrick.Baker@ci.charlotte.nc.us>; Simpson, Sheila <ssimpson@ci.charlotte.nc.us>
Cc: Newbold, Mark <mnewbold@cmpd.org>; Putney, Kerr <kputney@cmpd.org>
Subject: Retirement statute re: return to work

Patrick and Sheila – I have looked at the retirement statutes, and below is my analysis. Note that this is slightly different than the one I sent last night because I included the temporary employment language in this analysis. The bottom line is that an employee can agree before he retires to come back after a one-month separation as long as he is returning to a position that is less than 1,000 hours or is considered temporary employment.

Retirement is defined as "the commencement of monthly retirement benefits, along with the termination of employment and the complete separation from active service with no intent or agreement, expressed or implied, to *return to service*. ... In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time ... at any time during the same month immediately following the effective first day of retirement." [NCGS 128-21(19)] (emphasis added)

It is only with the intent or agreement to *return to service* that is prohibited.

Service means service as an employee as described in subdivision (10) of this section. [NCGS 128-21(22)]

Subsection 10 defines employee as a person who is *regularly employed* in the service of and compensated by an employer (the city meets the definition of employer). [NCGS 128-21(10)]

Given the statutory interpretation so far, the statutory prohibition for receiving retirement is the expression of the intent or agreement to return as a "regularly employed" employee.

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From: Kelly, Brent
Sent: Wednesday, October 9, 2019 2:24 PM
To: Baker, Patrick
Subject: RE: Retirement statute re: return to work

Excellent
thank you.

From: Baker, Patrick
Sent: Wednesday, October 9, 2019 2:09 PM
To: Root, Hope <hroot@ci.charlotte.nc.us>; Simpson, Sheila <ssimpson@ci.charlotte.nc.us>
Cc: Newbold, Mark <mnewbold@cmpd.org>; Putney, Kerr <kputney@cmpd.org>; Jones, Marcus <Marcus.Jones@ci.charlotte.nc.us>; Joy-Hogg, Sabrina <Sabrina.Joy-Hogg@ci.charlotte.nc.us>; Schneider, Jason <Jason.Schneider@ci.charlotte.nc.us>; Clampitt, Brittany <Brittany.Clampitt@ci.charlotte.nc.us>; Kelly, Brent <Brent.Kelly@ci.charlotte.nc.us>
Subject: RE: Retirement statute re: return to work

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