

Introduced by: Ms. Kilpatrick,
Mr. Sheldon
Date of introduction: March 31, 2020

ORDINANCE NO. 20-021

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 26 (“HUMAN RESOURCES”)
REGARDING THE REEMPLOYMENT OF PENSIONERS**

WHEREAS, the New Castle County Employees’ Pension Program contains a number of pension plans for current and former employees (the “Pension Program”); and

WHEREAS, the Pension Program must comply with various federal tax laws and regulations in order for it and its members to enjoy favorable tax treatment under Section 401(a) of the *Internal Revenue Code* (“IRC”); and

WHEREAS, in order for the Pension Program to receive qualified status under IRC § 401(a), pension distributions must only be made to employees who have had a bona fide retirement; and

WHEREAS, for federal tax purposes, the Internal Revenue Service considers a bona fide retirement to be one where (a) there is no understanding between the employer and employee that upon retirement the employee will return to service with the employer and (b) there is a complete separation from service; and

WHEREAS, current Human Resources practices with respect to reemployment of pensioners are consistent with the IRC notwithstanding certain contrary provisions in the *New Castle County Code*; and

WHEREAS, *New Castle County Code* § 26.04.605 contemplates that the provisions in Article 4 (Pensions) may need to be amended periodically to comply with federal tax law in order to preserve the favorable tax status of the Pension Program; and

WHEREAS, County Council believes amending the *New Castle County Code* to ensure that reemployment of any pensioner is consistent with applicable federal tax law and current practices of the Office of Human Resources will promote the best interests of current plan members, plan retirees and taxpayers, and will also protect the viability of the Pension Program.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 26, (“Human Resources”), Article 4 (“Pensions”), Section 26.04.122 (“Employment of pensioners”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 26.04.122 - Employment of pensioners.

- A. An individual shall not receive a service or disability pension under this Article for any month during which he or she is an employee unless he or she is an official elected by popular vote.÷

- ~~1. An official elected by popular vote;~~
 2. An official appointed by the Governor, County Executive or the County Council; or
 - ~~3. An employee or independent contractor whose earnings from such employment or contract with the County do not exceed the amount of earned income allowable by the United States Social Security Administration without affecting social security benefits.~~
- B. An individual other than an elected official receiving a service pension under this Chapter Article may continue to receive such pension upon reemployment with the County only if the individual has at least a 6-month separation of service from his or her effective date of retirement, in accordance with written policy of the Office of Human Resources and in compliance with applicable federal tax laws and guidance. An elected official who retires and seeks reemployment with the County is subject to the 6-month separation of service requirement set forth herein.
- C. No individual receiving a service ~~or disability~~ pension under this Article shall accrue additional time toward a pension during any period of reemployment which he or she is an employee.
- D. The 6-month separation of service requirement set forth herein shall not apply to an employee who seeks another position at the County and who is not either vested or seeking to retire in order to begin receiving service pension distributions.

Section 2. *New Castle County Code* Chapter 26, (“Human Resources”), Article 4 (“Pensions”), Section 26.04.723 (“Employment of pensioners”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 26.04.723 - Employment of pensioners.

- A. An individual shall not receive a service or disability pension under this Article for any month during which he or she is an employee unless he or she is an official elected by popular vote.÷
- ~~1. An official elected by popular vote; or~~
 2. ~~An official appointed by the Governor, County Executive or the County Council.~~
- B. ~~No individual receiving a service or disability pension under this Article shall accrue additional time toward a pension during any period of reemployment which he or she is an employee.~~ An individual other than an elected official receiving a service pension under this Article may continue to receive such pension upon reemployment with the County only if the individual has at least a 6-month separation of service from his or her effective date of retirement, in accordance with written policy of the Office of Human Resources and in compliance with applicable federal tax laws and guidance. An elected official who retires and seeks reemployment with the County is subject to the 6-month separation of service requirement set forth herein.

- C. This provision shall not preclude an individual who has received a distribution of his or her defined contribution benefits under Section 26.04.717 from being reemployed by the County.
- D. The 6-month separation of service requirement set forth herein shall not apply to an employee who seeks another position at the County and who is not either vested or seeking to retire in order to begin receiving service pension distributions.

Section 3. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed to the extent they are in conflict with the provisions of this ordinance.

Section 4. This Ordinance shall become effective immediately upon its adoption by County Council and approval of the County Executive or as otherwise provided in 9 Del. C § 1156.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This Ordinance amends *New Castle County Code* §§ 26.04.122 and 26.04.723 to be consistent with applicable federal tax law, regulations and guidance in order to preserve and protect the qualified federal tax status of the New Castle County Employees' Pension Program.

FISCAL NOTE: There is no discernable fiscal impact through the adoption of this Ordinance.