

# Florida Retirement System

## Retention of Critically Needed DROP Retirees



**DES of Florida, LLC**

PRESENTED BY:

**DES of Florida, LLC (DES)**

**Dear Florida Retirement System participant**

I appreciate the opportunity to introduce DES of Florida, LLC (DES/F) and the process we have in place for retaining critically needed Deferred Retirement Option Plan (DROP) retirees.

Our work in the area of DROP employee retention was initiated in May of 2003 when State of Florida agencies and School Districts began feeling the effects of the DROP employees leaving and the passing of the class Size initiative. We have established a staffing solution to provide an effective way to retain critically needed qualified personnel. DES/Fs' primary goals for our staffing solution distinguishes our company from others. Our primary goals are:

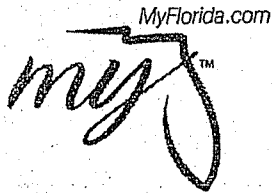
- **The DROP retiree's status and benefits cannot be jeopardized.**  
DES/F has documentation from the State of Florida substantiating that our employees' retirement benefits are not in jeopardy. These documents also protect the FRS participating agencies from the issue of co-employment with State Retirement Division and the Internal Revenue Service.
- **Keep the cost of our services comparable to the loaded cost of the employee.**  
DES/F used information from the Department of Management Service annual workforce report to structure our cost model. This has enabled DES/F to be "budget neutral" to the agencies which we serve.
- **To maintain the retiree's salary level at the point in which they retired.**  
DES/F employees are able to maintain the same salary as when they retired.

DES/F has been working successfully with many State of Florida agencies and School Districts. If you wish to speak to or find out which organizations we're working with please contact me and I can provide you with their contact information.

Thank you for your time and consideration of DES/F, please contact me if you are interested in further information about DES/F and our services.

Sincerely,

Roy F. DeCastro  
DES of Florida, LLC  
President and Managing Partner



www.MyFlorida.com/frs



**Division of Retirement**

Bureau of Enrollment and Contributions  
Cedars Executive Center  
2639 North Monroe Street, Building C  
Tallahassee, FL 32399-1560

Telephone: 850-488-8837  
Fax: 850-410-2196

JEB BUSH, GOVERNOR

WILLIAM S. SIMON, SECRETARY

September 9, 2003

Mr. Roy F. DeCastro, President  
DES of Florida LLC  
Post Office Box 13935  
Tallahassee, Florida 32317-3539

Dear Mr. DeCastro:

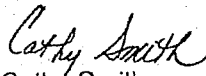
I have reviewed the following documents relating to DES of Florida, LLC:

- General Agreement for Temporary Services
- Purchase Order Letter
- LPO/Contract

Based on these documents, I have determined that if your company hires a Florida Retirement System (FRS) retiree, he is an employee of your company. DES of Florida, LLC can provide services to an FRS participating employer (buyer) without jeopardizing the retirement benefits of this retiree.

If I can be of further service, please contact me at (850) 414-6386.

Sincerely,

  
Cathy Smith  
Benefits Administrator

CS:mea



www.MyFlorida.com/frs



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Tallahassee, FL 32399-1560

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JEB BUSH, GOVERNOR

WILLIAM S. SIMON, SECRETARY

April 16, 2004

MR ROY DECASTRO  
PRESIDENT  
DES OF FLORIDA LLC  
POST OFFICE BOX 13935  
TALLAHASSEE FLORIDA 32317-3539

Dear Mr. DeCastro:

This is in response to your March 22, 2004 letter concerning reemployment after retirement during the first twelve months after retirement.

The answers to the questions posed in your letter are as follows:

1. Can a participating employer rehire a FRS retiree within one year after retirement?

Except for K through 12 classroom teachers, a FRS retiree cannot work for a FRS employer for the first twelve months after a retirement. A retiree can suspend benefits and work for a FRS employer from the second through the twelfth month.

If the Enrollment Section has reviewed a FRS retiree's contractual arrangement with a FRS participating employer and has determined the retiree is an independent contractor, the member will not be in violation of the reemployment after retirement provisions.

2. If the aforementioned one-year waiting period is required, can a retiree circumvent this condition by creating his own corporation providing for the retiree's services?

We review each contract on it's own merit to insure compliance with Section 60S-1.006(32), F.A.C. (copy enclosed). If a retiree has his own corporation, that is not sufficient to ensure compliance with the F.A.C.

3. Are these contracts required to be reviewed and /or approved by your division or another division within FRS?

Contractual arrangements with FRS employers during the first twelve months of retirement should be reviewed by the Enrollment Section to ensure compliance with the reemployment after retirement provisions. Violations of the reemployment after retirement provisions can result in the retiree and the employing agency being jointly and severally liable pursuant to Section 60S-4.012(2), F.A.C. (copy enclosed).




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Mr. Roy DeCastro  
April 16, 2004  
Page Two

Should you have any questions or need additional information, please call Pat Ochoa or me at  
SUNCOM 278-8837 or (850) 488-8837.

Sincerely,



Cathy Smith  
Benefits Administrator

CS:poa

Enclosures



DEPARTMENT OF MANAGEMENT  
**SERVICES**

"We serve those who  
serve Florida"

JEB BUSH  
Governor

Tom Lewis, Jr.  
Secretary

MyFlorida.com



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18 April 2005

Roy F. DeCastro, Principal  
DES of Florida, LLC  
Post Office Box 13935  
Tallahassee, Florida 32317-3935

Re: Hiring of Retired FRS Members

Dear Mr. DeCastro:

This letter is to confirm my recent e-mail to you regarding DES of Florida's proposal to hire retired Florida Retirement System (FRS) members and to utilize them as temporary employees providing services to FRS employers.

Our legal staff has reviewed your proposed contract. Provided the retired FRS members are employed by DES and not by a FRS participating employer there is no statutory prohibition that would prohibit DES from offering them as temporary workers to FRS participating employers or that would impact their continued receipt of state retirement benefits.

Should you require anything further, please do not hesitate to contact me.

Sincerely,

Steve Godwin  
Deputy General Counsel

cc:

Chris Kimmons, Chief Human Resource  
Management Officer  
Division of Human Resource Management



DEPARTMENT OF MANAGEMENT  
**SERVICES**

Governor Charlie Crist  
Secretary Linda H. South

Division of Retirement  
Bureau of Enrollment and Contributions  
P O Box 9000  
Tallahassee, FL 32315-9000  
TOLL FREE TEL 877.377.3675  
TEL 850.488.8837 FAX 850.410.2196  
<http://dms.myflorida.com>

April 17, 2007

MR ROY F DECASTRO  
PRESIDENT  
DES OF FLORIDA LLC  
PO BOX 13935  
TALLAHASSEE FL 32317-3539

Dear Mr. DeCastro:

Based on a review of the documentation you submitted, we determined that when your company hires a Florida Retirement System (FRS) retiree, the retiree is solely an employee of your company. DES of Florida, LLC, can provide services to any FRS participating employer (buyer) without the retiree violating the reemployment after retirement provisions.

The Division of Retirement will no longer require a review of the Employment Relationship Questionnaires for FRS retirees who seek employment with your company since DES of Florida, LLC is a private company.

If you have any questions, please contact the Enrollment Section.

Sincerely,

Cathy Smith, Chief  
Bureau of Enrollment and Contributions

CS:jwm

cc: Robert H. Hoffman

CEO 05-13--July 26, 2005

## POSTEMPLOYMENT RESTRICTIONS

### RETIRED STATE EMPLOYEE EMPLOYED WITH COMPANY CONTRACTING WITH EMPLOYEE'S FORMER AGENCY

To: *Mr. James W. Sloan (Tallahassee)*

#### SUMMARY:

Section 112.3185(5), Florida Statutes, does not prohibit a former employee of a State government department from being employed (at arms length by a bona fide company during the first year after leaving his public position) delivering contractual services to his former public agency. CEO 93-2 is referenced.<sup>1</sup>

#### QUESTION:

Would Section 112.3185(5), Florida Statutes, which prohibits a former employee of a public agency from being paid more money for contractual services provided to the agency, by the agency (during the first year after his severance from the agency), than the amount of his annual salary from the agency on the date of cessation of his public employment, prohibit your being employed at arms length by a bona fide company delivering services to your former agency?

Your question is answered in the negative.

By your letter of inquiry and materials submitted to or generated by our staff, we are advised that you are retired from employment with a department of State government,<sup>2</sup> having completed the Deferred Retirement Option Program (DROP) on December 31, 2004, and that you are considering accepting employment with a company<sup>3</sup> desirous of contracting with agencies of State government, including your former department, to perform services. Further, we are advised that in your employment with the company, you would be delivering services for it to State agencies, including your former agency. More particularly, we are advised that the company would contract with a State agency to provide services to the agency and that the company would deliver the services to the agency via employees (or independent contractors) such as yourself,<sup>4</sup> many of whom

<sup>1</sup> Opinions of the Commission on Ethics can be viewed on its website: [www.ethics.state.fl.us](http://www.ethics.state.fl.us)

<sup>2</sup> Department of Veterans' Affairs.

<sup>3</sup> DES of Florida, LLC.

<sup>4</sup> Your inquiry states that your delivery of services would be through a "letter of purchase order" executed by the agency, pursuant to a master services contract between the agency and the company, that would identify you and specify the scope of work and billing rate for the given project; and that the company would bill the agency "strictly for hours worked."



would be retired State employees.<sup>5</sup>

Section 112.3185(5), Florida Statutes,<sup>6</sup> provides:

The sum of money paid to a former agency employee during the first year after the cessation of his or her responsibilities, by the agency with whom he or she was employed, for contractual services provided to the agency, shall not exceed the annual salary received on the date of cessation of his or her responsibilities. The provisions of this subsection may be waived by the agency head for a particular contract if the agency head determines that such waiver will result in significant time or cost savings for the state.

We find that your working for the company providing services to your former agency would not be prohibited by Section 112.3185(5). It is the intent of the provision that it only apply to situations in which the former employee contracts with the former public agency. CEO 93-2. Further, in CEO 93-2, we found that the provision did not apply in a situation in which a former employee left a public agency to work for a business entity contracting with the agency, emphasizing that the statute addressed the sum of money paid to the former employee by the agency. Similarly, in your proposed situation, the company (your private employer), and not your former public agency, would be paying you. Additionally, we recognize, as we did in CEO 93-2, that a fraudulent or "straw man" contract could be set up to circumvent the prohibition; but, as in the previous opinion, we do not find such to be the case regarding your inquiry.<sup>7</sup>

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<sup>5</sup> The instant inquiry indicates that there are a number of persons in situations similar to yours who await the guidance of this opinion.

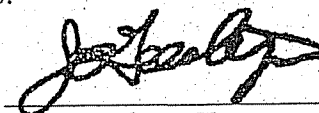
<sup>6</sup> The applicable definition of "agency" is found at Section 112.3185(1)(b), Florida Statutes, and Section 112.3185(1)(a), Florida Statutes, provides that "'contractual services' shall be defined as set forth in chapter 287."

<sup>7</sup> However, as we pointed out in CEO 93-2, Sections 112.3185(3) and (4), Florida Statutes, can apply in situations in which one works for a company (and is paid by the company) in connection with contracts that the company has with his or her former public agency, without the necessity of the former agency paying the former employee. Nevertheless, nothing in your inquiry indicates the applicability of the statutes to your proposed situation because your situation does not indicate that you had any role regarding the company's proposed contract with your former agency while you were employed at your former agency. These statutes provide:

No agency employee shall, after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract in which the agency employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an officer or employee. [Section 112.3185(3), Florida Statutes.]

Accordingly, we find that Section 112.3185(5), Florida Statutes, does not prohibit your working for the company to deliver services to your former agency under the company's contract with the agency, within one year of your leaving public employment.<sup>8</sup>

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on July 21, 2005 and **RENDERED** this 26th day of July, 2005.



Joel Gustafson, *Chairman*

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No agency employee shall, within 2 years after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract for contractual services which was within his or her responsibility while an employee. [Section 112.3185(4), Florida Statutes.]

<sup>8</sup> Although you represent that "[u]nder no circumstances would [you] be compensated at a rate greater than that which was paid to [you] prior to retirement," our finding herein is based in your not being paid by your former agency. Assuming arguendo that you were paid by the company more in the first year after you left public employment than your annual salary at severance from public employment, we find that the statute still would not prohibit your employment, unless the company were a fraudulent device (a "straw man").