

## NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

### I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes the adoption of section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR). By proposing this regulation in this Article, CalPERS seeks to clarify what is considered "limited duration" employment as stated in Government Code (GC) sections 7522.56, 21224, and 21229 for retired persons serving after retirement, and CCR section 571(a)(3) for employees required by their employer or governing board or body to work in an upgraded position or classification. The California Public Employees' Retirement Law (PERL) and the California Public Employees' Pension Reform Act of 2013 (PEPRA) do not explicitly define "limited duration" employment for either situation. By proposing this regulation, the Board seeks to explicitly define "limited duration" employment and provide clarity and uniformity for CalPERS, its members, CalPERS-covered employers, and other stakeholders by ensuring consistent use of the term "limited duration."

### II. WRITTEN COMMENT PERIOD

Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period has been established as commencing on **June 17, 2022** and closing at 11:59 p.m. on **August 1, 2022**. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted by e-mail to [Regulation\\_Coordinator@calpers.ca.gov](mailto:Regulation_Coordinator@calpers.ca.gov) or mailed to the following address:

Andrew White, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942720  
Sacramento, CA 94229-2720  
Telephone: (916) 795-3038

### III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days before the close of the written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

#### **IV. ACCESS TO HEARING ROOM**

The hearing room will be accessible to persons with mobility impairments, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

#### **V. AUTHORITY AND REFERENCE**

Under GC section 7522.02(j), the Board has the authority to adopt regulations or resolutions to comply with the requirements of PEPRA, and under GC section 20121, the Board has authority to make rules as it deems proper.

GC sections 7522.56, 21202, 21220, 21224, and 21229 govern post-retirement employment, among other statutes. GC sections 20636 and 20636.1 require the Board to promulgate regulations explaining what constitutes “special compensation” as used in those sections. CCR section 571 defines special compensation, including temporary upgrade pay. The proposed regulation clarifies the meaning of “limited duration” employment for purposes of GC sections 7522.56, 21224, and 21229, and CCR section 571(a)(3).

#### **VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

##### **Working After Retirement**

The PERL and PEPRA allow retired persons to work for CalPERS-covered employers after retirement without reinstatement or loss or interruption of benefits under certain conditions. GC sections 7522.56, 21224, and 21229 allow retired persons to work after retirement either during an emergency to prevent the stoppage of public business or because the retired person has specific skills needed to perform work of limited duration. All working-after-retirement appointments under these provisions are limited to 960 hours in a fiscal year, but the authorizing statutes do not specify how long appointments of a “limited duration” can be. GC section 21224 applies to appointments with the State of California and public agencies and GC section 21229 applies to appointments with school employers and the California State University. GC section 7522.56 applies to specified appointments with public employers in public retirement systems in California effective January 1, 2013.

By proposing this regulation, the Board seeks to explicitly define “limited duration” employment as stated in GC sections 7522.56, 21224, and 21229 for retired persons serving after retirement and set forth processes to extend an appointment of a retired person serving after retirement if the CalPERS-covered employer determines the appointment requires an extension beyond the period of time defined as a “limited duration” in the proposed regulation. This proposed regulation only defines “limited duration” employment as it pertains to working-after-retirement appointments with CalPERS-covered employers. This proposed regulation does not define “limited duration”

employment for purposes of administering working-after-retirement statutes for any public retirement system in California other than CalPERS.

Currently there is variation in the duration of working-after-retirement appointments. This proposed regulation is intended to benefit CalPERS, its members, CalPERS-covered employers, and other stakeholders by providing a clear definition of and ensure consistent use of the phrase “limited duration” for working-after-retirement appointments.

### **Special Compensation**

In 1994, CalPERS promulgated CCR section 571 to delineate an all-inclusive list of special compensation to be reported to CalPERS to comply with Senate Bill 53 (Stats. 1993, Ch. 1297, operative 7/1/1994). CCR section 571(a)(3) identifies temporary upgrade pay as reportable special compensation paid to employees “who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.” CCR section 571(a)(3) does not define “limited duration” employment. This proposed regulation is intended to benefit CalPERS, its members, CalPERS-covered employers, and other stakeholders by providing a clear definition of and ensure consistent use of the phrase “limited duration” for temporary upgrade pay reportable to CalPERS as special compensation.

### **Consistency Evaluation**

CalPERS conducted a review for any related state regulation and found that there are no other state regulations concerning the definition of “limited duration” employment for purposes of CalPERS’ administration of GC sections 7522.56, 21224, and 21229, and CCR section 571(a)(3). Therefore, CalPERS has determined that the proposed regulation is not inconsistent or incompatible with existing regulations.

## **VII. PRENOTICE CONSULTATION WITH THE PUBLIC**

No prenotice consultation with the public was done, as all public comments and hearing requests can be submitted during the written comment period.

## **VIII. EFFECT ON SMALL BUSINESS**

The proposed regulatory action does not affect small business because it applies only to CalPERS, CalPERS-covered employers, and CalPERS members.

## **IX. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Board has made the following initial determinations:

A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose mandates on local agencies and school districts.

B. COSTS OR SAVINGS TO ANY STATE AGENCY: Costs estimated to be incurred by CalPERS, a state agency, will be absorbed in its existing budget and resources.

C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action will not result in any costs on any local agency or school district.

D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose any nondiscretionary costs or savings on local agencies.

E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action will not result in costs or savings in federal funding to the State of California.

F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action will not have a significant statewide adverse economic impact affecting businesses including the ability of businesses in California to compete with businesses in other states.

G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because the proposed regulatory action only applies to CalPERS, CalPERS-covered employers, and CalPERS members and does not impose costs on CalPERS members who are in compliance with the proposed regulatory action.

H. RESULTS OF THE ECONOMIC IMPACT ANALYSIS: The proposed regulatory action is not intended to create or eliminate jobs within California; and will not (1) create new businesses or eliminate existing businesses within California; (2) affect the expansion of businesses currently doing business within California; and (3) affect the health and welfare of California residents, worker safety or the State's environment. The proposed regulatory action serves only to define certain terms used in the PERL and PEPRA.

I. EFFECT ON HOUSING COSTS: The proposed regulatory action will have no effect on housing costs.

J. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC SECTION 17500 THROUGH SECTION 17630: There are no costs to any local agency or school district which must be reimbursed in accordance with GC section 17500 through section 17630.

## **X. CONSIDERATION OF ALTERNATIVES**

In accordance with GC section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at a public hearing or during the written comment period.

## **XI. CONTACT PERSON**

Inquiries concerning the proposed administrative action may be directed to:

Andrew White, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942720  
Sacramento, CA 94229-2720  
Telephone: (916) 795-3038  
[Regulation\\_Coordinator@calpers.ca.gov](mailto:Regulation_Coordinator@calpers.ca.gov)

The backup contact person for the proposed action is:

Andrea Peters, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942720  
Sacramento, CA 94229-2720  
Telephone: (916) 795-3038  
[Regulations\\_Coordinator@calpers.ca.gov](mailto:Regulations_Coordinator@calpers.ca.gov)

Please direct requests for copies of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to the Regulation Coordinator at the contact information listed above.

## **XII. AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 Q Street, Sacramento, CA, 95811. As of the date this notice is published in the Notice

Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting the CalPERS Regulation Coordinator at the contact information listed in Section XI.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at <https://www.calpers.ca.gov/page/about/laws-regulations/regulatory-actions>.

### **XIII. AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After receiving comments from the public and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of the CalPERS Regulation Coordinator at the mailing address listed in Section XI. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

### **XIV. AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the contact information listed in Section XI.