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Circular Letter

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TO: **ALL CALPERS EMPLOYERS**

SUBJECT: **COMMON MEMBERSHIP FINDINGS FOUND IN CALPERS PUBLIC EMPLOYER REVIEWS**

The purpose of this Circular Letter is to mitigate the most common Membership reporting errors found during an employer review and to provide information on how to correctly report eligible employees into CalPERS membership pursuant to the Public Employees' Retirement Law (PERL).

Whether or not an employee's position is eligible for CalPERS membership is based upon several different factors such as the type of position the employee will be working, whether or not the new employee is already a member of CalPERS and whether or not the employee's position is excluded from the employer's retirement contract or by the PERL.¹ It is important to ask these questions in order to make the correct decision regarding an employee's status.

Not Enrolling Employees Into Membership When Eligibility Was Met

Employees appointed to a permanent/full-time or permanent /part-time (at least half-time) position qualify for immediate membership. Immediate membership will also apply if the full-time appointment is termed to exceed six months or part-time appointment (at least half-time) is termed at least a year or more.

Not Enrolling Less Than Full-Time or Part-Time/Temporary Employees Into Membership When Eligibility Was Met²

Membership eligibility for less than full-time employees is whether they work 1,000 hours (even if paid on an hourly basis) or 125 days (if paid on a daily or per diem basis) in a fiscal year (July 1 through June 30). Per Government Code Section 20305(a)(3)(B) of the PERL, 125 eight-hour days equals 1,000 hours.

¹ See the CalPERS Reference Manual for more information about excluded positions.

² It is also important to note that Government Code section 20305(b) superseded any contract provision excluding persons in any temporary or seasonal employment basis.

If you have an employee working less than full-time, their hours must be monitored to determine when and if they qualify for membership. An employee qualifies for membership when the following occurs:

- No term (length) of appointment is specified in the appointment/employment, but full-time employment continues longer than six months.
- The person works more than 125 days in a fiscal year if paid on a “per diem” basis (i.e., “per day”). For this purpose, “day” means each 8 hours of compensated service; (e.g. a firefighter working a 24-hour shift is working 3 “days” per shift).
- The person works 1,000 hours in a fiscal year if paid on other than a per diem basis.

Included in the accumulation of hours is overtime and used leave credits to reach the 1,000 hours or 125 days. Leave during which the member is excused from working and paid vacation, sick leave, etc., is included in the 1,000 hours. Also, the work hours or work days subjected to Mandatory Furlough leave must be applied toward the accumulation of hours for membership eligibility purposes.

Additionally, if you are an agency that hires temporary employees through a staffing or third party agency and you have the right to control and direct their daily duties, you are required to monitor their hours for membership eligibility. These employees are most likely considered employees of your agency and must be treated as if they were directly hired by your agency.

Part-time Employees With Prior Membership Were Not Enrolled Upon Hire

If a person is currently a member of CalPERS (i.e., has contributions/service on account that have not been refunded), the person cannot be excluded from membership due to her/his time base (e.g., working less than 20 hours per week) or appointment length (e.g., 90 days)³.

Therefore, persons who are currently members of CalPERS do not need to re-qualify for membership and must be brought into membership upon the date of hire at your agency provided they are not excluded under the PERL or your agency’s retirement contract with CalPERS. This applies even if their membership was established through employment with another CalPERS agency, or if they are not currently working (i.e., are on inactive status).

³ Unless membership exclusion applies to the position by contract or statutory provision (See the CalPERS Reference Manual for more information.)

Optional Membership for Elected Officials

Optional membership is for those people who are appointed or elected to office, such as city council members, county board of supervisors, or City Mayor positions. Optional members are defined in Government Code Sections 20320 – 20327 of the PERL.

Optional members are also appointive officers of a city or county but not of a special district who occupy a fixed term of office. In most of these types of cases, the optional members earn full-time service credit.

In order for membership to be established in CalPERS, elective/appointed officers must elect in writing by submitting a signed Optional Member election form to CalPERS. It is very important that your agency offers the Optional Member election form at the date of appointment to elected officials at the agency and that the form is submitted to CalPERS timely. The elective or appointed officer is excluded from membership until he/she files a signed election form to become a member of CalPERS.

The election for membership is effective the date of the signed election form. If an elective/appointed officer changes optional positions, a new election document is required.

Affiliated Entity Employees Were Improperly Enrolled Into CalPERS Membership

Government Code Section 20028(b) of the PERL defines an employee as: “(b) Any person in the employ of a contracting agency.” Government Code Section 20125 provides: “The Board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.”

The common law employment test is used by the courts and the CalPERS Board of Administration to determine “employee” status under the PERL. In determining whether one who performs services for another is an employee, the most important factor is the right to control the manner and means of accomplishing the desired result; whether or not that right is exercised. Only employees of the CalPERS agency can be enrolled into the system for membership. Employees of an affiliated entity shall not be reported through the CalPERS agency.

Penalties can apply when employees are improperly enrolled into membership. CalPERS agencies improperly enrolling employees can jeopardize their retirement contract status with CalPERS and can result in a loss of benefits for employees.

Consequences For Failing to Enroll Eligible CalPERS Employees Into Membership

Government Section 20283 of the PERL states in part that an employer that fails to enroll an employee into membership within 90 days of eligibility is required to pay all arrears, both member and employer contributions and a \$500 administrative fee per member to the system. The Section also states that employers cannot pass on the cost to the employee.

If it is discovered that the arrears have been reported through the payroll process, CalPERS has the right to instruct the agency to back out the contributions and to refund the contributions to their employee.

Additional Resources

For more information on these topics, please refer to the Public Agency & Schools Reference Guide or the State Reference Guide, which are located on CalPERS On-Line. If you have any questions, please call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

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