

Title 2. California Public Employees' Retirement System

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.

I. PROPOSED REGULATORY ACTION

In this filing, the proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document. This proposed regulatory action clarifies and makes specific requirements for publicly available pay schedule and labor policy or agreement. As used in this regulation, labor policy or agreement means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 pm on March 21, 2011. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; e-mail at: Veronica_Mora@calpers.ca.gov; or mailed to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-0713

III. PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period.

IV. ACCESS TO HEARING ROOM

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

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration (Board) has general authority to take regulatory action under Government Code section 20121. The Board has specific authority to adopt proposed sections 570.5 and 571 under Government Code section 20636 and 20636.1.

This action would be declaratory of the existing law, and serve an informative function for workers and employers who are unfamiliar with these existing laws.

Authority cited for section 570.5 is sections 20120 and 20121 of the Government Code. Reference is sections 20630, 20636 and 20636.1 of the Government Code.

Authority cited for section 571 is sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121 of the Government Code. Reference is sections 20630, 20636, 20636.1 and 20691 of the Government Code.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as

well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public employees working in positions qualified for membership in CalPERS.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action imposes a mandate on local agencies or school districts, related to the publication of pay schedules.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action does not impact costs or savings for any state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500, et seq.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.

- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.
- F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

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 for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

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

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Tomi Jimenez
Employer Services Division
California Public Employees' Retirement System
P.O. Box 942709
Telephone: (916)795-0340

E-mail: tomi_jimenez@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Mora, CalPERS Regulations Coordinator, at the address shown above, or (916) 795-0713 (veronica_mora@calpers.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulations after the public comment period has closed. It may amend the proposed regulations as modified, if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII. One can access the regulatory material regarding this action at CalPERS' website at www.calpers.ca.gov under About CalPERS > Legislation, Regulations & Statutes > Regulatory Actions > Current Regulatory Actions.