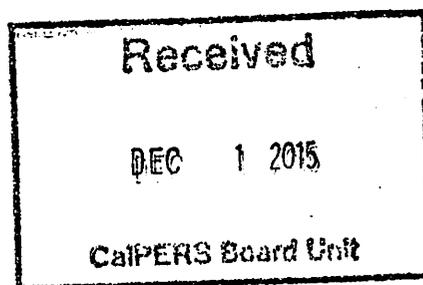


ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION



Roberta Almeida

Petition for Reconsideration

CalPERS is making a mistake to go along with the proposed decision. I do not see how any board member would have had time to read my arguments against the proposed decision. There were 18 cases to be decided at the November meeting, in addition to the full hearing that was held. The arguments were only published a few days prior to the board meeting.

I ask that the board reconsider the decision and the facts regarding my employment determination. I was misclassified as an independent contractor from 1998 to 2009, and according to section 20028(a) of the PERL, my employer should have enrolled me in CalPERS. The complicating factor is that my employer was, and still is, CalPERS.

The justification for requesting reconsideration is that there is a conflict of interest in the way CalPERS has handled my case, resulting in arbitrary and capricious application of the law. The case was reviewed entirely from the employer side, with no effort to get at the truth and act as a fiduciary, and no effort to hold CalPERS, the employer, to the same standards which it holds other employers. It sets a dangerous precedent if CalPERS refuses to hold itself accountable to the same rules it is tasked with enforcing. If the employer name had been hidden, and the facts compared to other similar situations presented to CalPERS, CalPERS would have determined that I was an employee according to the PERL and the appeal to the ALJ would not have been necessary. Also, had CalPERS acted in a fiduciary manner, the expert opinion provided to the ALJ would have been objective and not misleading. Had I known and acted at the time, IRS, EDD and the Division of Worker's compensation would have determined that I was an employee according to their rules. Due to their seemingly unlimited legal resources, CalPERS has become "Too big to care" about the rules.

My case should never have needed an appeal. The employment relationship questionnaire filled out by CalPERS had numerous material inaccuracies. My previously submitted arguments for the proposed decision explain how the subsequent appeal process was not done fairly or with an effort to truly expose the facts. It was all about CalPERS preventing the process from going forward by filing meritless motions (something recently made illegal under Cal. Code of Civil Procedure section 128.5 by Governor Brown). I also was not allowed to provide rebuttal, so Judge Wong made his decision based on a lopsided view of the facts. That is not due process.

Issue

The basis for my determination request to CalPERS, was this section of the PERL, which defines an "Employee".

20028. "Employee" means all of the following:

(a) Any person in the employ of the state, a county superintendent of schools, or the university whose compensation, or at least that portion of his or her compensation that is provided by the state, a county superintendent of schools, or the university, is paid

out of funds directly controlled by the state, a county superintendent of schools, or the university, excluding all other political subdivisions, municipal, public and quasi-public corporations. "Funds directly controlled by the state" includes funds deposited in and disbursed from the State Treasury in payment of compensation, regardless of their source.

The question becomes, was I "paid out of funds directly controlled by the state", and was I "in the employ of the state." For at least the majority of the time period I contracted with CalPERS, even Judge Wong agrees that, unlike most consultants, I was paid out of funds directly controlled by the state. So the issue becomes how to decide if I was "in the employ of the state", i.e., an employee or an independent contractor.

CalPERS cited the common law employment rules in my determination letter, but in the appeal they filed motions to prevent the application of those same rules to my case, presumably because they felt that if applied, I would be considered an employee and win the appeal. As noted in my argument against the proposed decision, that was a cynical move on CalPERS' part, since their own State Reference Guide states that they use the common law factors, and they have applied them in numerous similar cases without issue.

Judge Wong correctly concluded that the common law rules do apply. However, I dispute his interpretation of those rules in my case as being arbitrary and capricious, and not in keeping with how CalPERS has applied them in other cases. I also dispute that the doctrine of laches, should apply to my case or that it is in the best interest of CalPERS as a fiduciary.

History

I worked on contract with CalPERS for the period from 1998 to 2009. In the 11 years from 1998 to 2009, I never worked a day anywhere else, I never lost my CalPERS building or system access, and there was no time during which I didn't have at least one open contract with CalPERS with hours remaining on it. My children, two of whom are in college, don't remember me working anywhere but CalPERS.

Initially I worked as a subcontractor through a broker. The broker took my hours each month and submitted an invoice. Once they were paid, they would pay me. They also issued a 1099 to me as a subcontractor. As the broker, they placed me with CalPERS, and were certainly entitled to a finder's fee. But for two and a half years, they took over 35% of my pay each month, even though they had no involvement in directing my work. This was just how things worked - for the half hour of work per month (to do the invoicing), they received a rate of literally thousands of dollars per hour. I am not faulting the broker, but I am offended by CalPERS accusing me in

legal briefs of asking for a “gift of public funds” for following their administrative remedy to request service credit for hours I actually worked and to which am entitled to by law. For decades, CalPERS has had no hesitation to participate in a scheme that pays brokers, acting as placement agents of human capital, thousands of dollars per hour in public funds for performing monthly billing that offers no value-added to the state. In my opinion, that is a “gift of public funds.”

Around 2001, other contractors were getting their own CMAS agreement through DGS so they could work directly with CalPERS (without a broker). I applied for and obtained my own CMAS agreement. CalPERS encouraged me to go direct, but first they required that I obtain permission from my broker, even though my contract with the broker was ending. This was always the policy – whenever someone changed brokers, CalPERS made the person show they had permission from any previous brokers that worked with CalPERS. After that, I had multiple consecutive contracts with CalPERS. Throughout that time, I was on teams that were a mix of staff and contract employees. We were assigned to the same projects and maintenance, we attended staff and project meetings together, did the same status reports using the same templates; we had potlucks and birthday clubs and baby showers. I received multiple awards from CalPERS, including two ACE (Achieving CalPERS Excellence) awards and several team awards which were presented to us up on stage in front of the Board. I wrote recommendations at manager request to support three APEX nominees (two won). I received training in various software programs and tools. I was told what hours to work (example in Exhibit A) and what to work on, and I was required to be on premises when working during business hours. I had access from home and took after-hours support calls, even though after-hours support was not addressed in my contracts.

Some of the areas I worked on include Retirement Estimates and Applications, Pre-Calculation, Benefit Calculation, Benefit Release, Deduction Processing, Roll Processing, Health Annual Mass Change, Pre-Retirement Death, Post-Retirement Death, Tax Processing.

I was frequently called upon to help with day-to-day exceptions to help our members, such as how to get a quick fix in to make sure a death benefit was paid, how to get a retirement application that was “stuck” processed, or how to get a retirement adjustment processed. I had to learn how all types of retirement (service, disability and industrial disability), pre and post-retirement death benefit, and tax calculations were performed. I worked with staff on legislative analysis to identify potential system impacts of proposed legislative changes, which required detailed knowledge of the business rules within the system.

Right to Control

My case has been overcomplicated due to CalPERS' attempts to obfuscate the basic underlying issue that distinguishes an employee from an independent contractor. From the CalPERS Board's own Precedential Decision, 05-01, in the Matter of the Application for CalPERS Membership Credit by Lee Neidengard:

In *Tieberg v. Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943, 949, a decision cited with approval in *Cargill*, the Supreme Court referred to earlier decisions in setting forth the following pertinent test:

"[I]n *Empire Star Mines* [(1946) 28 Cal.2d 33, 43-44] this court, holding that a mining company was not an employer within the meaning of the Unemployment Insurance Act, said, 'In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the result desired. If the employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists. Strong evidence in support of an employment relationship is the right to discharge at will, without cause. [Citations omitted in original.]'" (Bold added)

Judge Wong cited '*Tieberg*' in Factual Finding 23, but neglected to include this crucial sentence: **"Strong evidence in support of an employment relationship is the right to discharge at will, without cause."** All of my contracts with CalPERS gave CalPERS the right to discharge me at will, without cause. Thus, "the most important factor" indicates that I was an employee. How can CalPERS deny they had the right to control? The court even states **the mere existence of the right is sufficient** and that the right does not have to be "exercised with respect to all details". As a fiduciary, CalPERS should have acknowledged that and supported my case from the beginning.

Even though I met the most important factor, I supplied hundreds of pages supporting the secondary factors, and those also clearly weigh in my favor. Staff from multiple departments testified in the hearing that when they first began working with me they did not know whether I was staff or a consultant because of the way I was treated as a part of the Legacy Support team. But CalPERS chose to subjectively focus on a few secondary factors to which they typically give little weight, and to repeat them over and over to compensate for their comparative lack of significance as factors.

EDD – Independent Contractor or Common Law Employee
For Use By State Agencies

Attached Exhibit B states,

The purpose of this article is to advise State agency secretaries and directors and other State hiring authorities of the common law and statutory distinctions between an independent contractor and an employee. This article is intended for use by California State agencies.

In the hearing and in the determination letter, CalPERS seemed to make a confusing argument that I couldn't possibly be misclassified because I was not hired through the State Civil Service process. It was as if CalPERS were saying that because they did not follow the law in hiring me, somehow the entire relationship was outside the law, and *therefore not subject to it*. This document from EDD elucidates that State agencies may be subject to penalties for misclassification of employees as independent contractors in violation of section Government Code 19130(c). Furthermore,

The Financial Integrity and State Manager's Accountability Act of 1983 (Government Code 13400 et seq.) makes the head of each State agency responsible for establishing and maintaining systems of internal control within their agency. Management's responsibility includes communicating the system requirements to employees and providing assurance that the system is functioning as prescribed.

This makes it clear that it is up to the *employer*, not the employee, to know, communicate and follow the rules. Attached to the EDD article is a list of 24 "Status Determination Elements" to help support an employment determination. I contend that 21 out of the 24 elements suggest I had an employee relationship with CalPERS base on the EDD elements. However, for California tax purposes, EDD states,

Because this determination process can be relatively subjective, program managers may find it useful to compare their working relationship with the contractor to their relationship with civil service employees. In that comparison, if the following statements are true, it is presumed that the individual to be engaged is an employee and, once such a conclusion is made, it is not necessary to continue to apply the 24 elements:

- The worker can quit or be terminated at any time without being legally obligated for failure to complete the job.
- The manager (or designated person) assigns, reviews, and supervises the individual's work.
- The worker performs services that are a part of the regular operation of the State agency.

All of these statements are affirmative in my case, and are documented in the Statements of Work (SOWs) written by CalPERS. Therefore, for EDD state tax purposes, **the 24 elements would not even need to be considered.** The three statements above are supported by an abundance of additional evidence from the hearing. **Note that EDD acknowledges the subjective nature of a determination, and suggests that a comparison to the working relationship with civil service employees is useful.** I provided evidence showing I was a member of the CalPERS Legacy Applications Support Unit; my work was assigned in the same way as staff's. CalPERS repeated assertions that I was not hired through the civil service process ignore the fact that such misclassifications exist and are the very reason why EDD issues articles like this one directed at state agencies.

Employer Questionnaire

The employer questionnaire submitted by CalPERS (Exhibit C) has numerous inaccuracies. It was filled out by the chief of Human Resources. Contracts do not go through Human Resources so he would not have any first-hand knowledge regarding my situation. He was not called by CalPERS during the administrative hearing; in fact, they did not even present this employer questionnaire, even though it was used to do the employment determination. Below are some notable points:

- Question #5 states that consultants work was "defined separately" depending on pending system code freezes.
 - That is not true. In the hearing, Judge Wong specifically asked a lead on my team that assigned work to us whether she saw "any difference between the two groups, the two groups being consultants and employees, as far as either the type of work they did or how they got assignments or how they were treated, things of that nature?" and her answer was "No."
 - The ACE awards that were given to me (ironically, one of them by the manager who signed the determination letter) were for team efforts where we were staff and consultants working together.
- Question #7 states that services were to be performed onsite at CalPERS because of security issues with writing and modifying code.

- That is not true. I was given remote access to CalPERS servers, but I was only allowed to work remotely after hours, even though in theory I could have accessed the system remotely during business hours.
- Question #9 states that I did not represent CalPERS externally.
 - That is not true. I acted as a representative of CalPERS IT department in dealing with external agencies (EDD, SCO, external vendors) with whom we had business dealings.
- Question #11 states CalPERS did not specify set schedule, and that they did not track my time for supervisory purposes.
 - That is not true. I provided documentation in the hearing that showed management at times made very specific demands regarding my schedule and required specific authorization to deviate from it. (Examples in Exhibit A)
- Question #12 states that I was “most likely extended an invitation to staff meetings and other agency meetings, but was definitely not required to attend.”
 - That is false and misleading. There was testimony and documentation to support that I had to attend staff, status and project meetings and any other meeting required by management.
 - In the SOWs it specifically states that I would be “responsible to participate in all status meetings as required by the Active Member Systems Manager.” I was not listed as “optional” on staff meeting notices.
- Question #13 states that I determined the hours of my work.
 - That is inaccurate. I provided an email from my manager to staff and consultants stating we had to take 1/2 hour lunch “due to federal labor laws”. (Exhibit D)
 - At one time it was demanded that I work exactly 40 hours, not a minute more and not a minute less. (Exhibit A).
- Question #17 states I was provided with written procedures in the form of “a” checklist.
 - That is an understatement. In fact, I was required to follow all the same procedures and forms as staff for documenting work, analyzing changes, meeting with program area staff, documenting status, doing change controls, attending change control meetings, processing help desk tickets, etc.
- Question #18 states “No. CalPERS did not provide any training to Ms. Almeida.”
 - That is false. I provided documentation in the hearing which shows I was given training on numerous occasions. (One example – Exhibit E).
- Question #22 states “No one at CalPERS had the right to control the manner and means of Ms. Almeida’s work. Ms. Almeida was responsible only for the end product.”

- This is false and sounds very “coached” to me. In the SOWs all services were performed per the direction of the IT manager, so how would the chief of HR know how much direction I was given?
- Besides my IT manager, I was assigned to one or more leads (staff or consultants) who controlled the manner and means of my work. I had to submit status reports detailing the phases of each item I worked on. I had to provide regular status in our task log for each step of each item I worked on, whether it was in analysis, design, coding testing, customer acceptance testing, etc. I was subject to getting approval from my lead or another reviewer for my technical design, which comes long before the “end product” or “final result”. I was assigned to process help tickets according to specific, detailed procedures. I was assigned to support test environments and set them up to certain specifications, and to be the person responsible for refreshing databases as requested.
- Question #23 says that CalPERS management defined the workload associated with the SOW, and once it was defined, no one directed my work, and I was not supervised. It also says the final work product was reviewed by a senior staff person to “ensure it met the expectations laid out in the SOW” but that it was not reviewed otherwise.
 - That is not at all an accurate description and is very misleading. The workload was not laid out in the SOW at all; the SOWs were very generic.
 - The workload could change daily, and was interchanged between the whole team. My managers would regularly pull work to give me something of a higher priority and shift things around. My interaction with managers was frequently a daily occurrence, sometimes multiple times a day, not weekly or monthly check-ins. I was given detailed instructions as to how to do my job and frequent email reminders about procedures to follow, etc. The work was reviewed at every stage, not just the end.
- Question #29 states “Yes, CalPERS could have terminated the relationship at any time without cause according to the termination clause in the SOW”.
 - This is accurate, and indicates that the contract was in fact nothing more than employment agreement.
- Question #30 states “Yes, Ms. Almeida could have quit at any time without any liability to CalPERS”.
 - This is accurate, and indicates that the contract was in fact nothing more than an employment agreement.
- Question #32 states I could have worked for other agencies, that I was not required to attend mandated training, and that I was hired for my existing skill set.
 - I was required to be available full-time to CalPERS per the SOW, so working for other agencies would not have been possible.
 - I did have mandated training.

- As I have previously clarified, it is not true that I was hired for my existing (prior to CalPERS) skill set. **I did not have pension experience or Natural/ADABAS programming experience until working at CalPERS.**

The questionnaire is crucial, because the combination of the answers to these questions was the employer input into the determination process. It is very significant in the overall characterization of my employment relationship with CalPERS.

The questionnaire is accurate with regard to the most important factor of control – CalPERS had the right to fire me. Yet CalPERS arbitrarily ignored the most important factor in making the employment determination. The fact that the questionnaire is so inaccurate with regard to the other factors indicates to me that CalPERS was either not concerned with accuracy, or even worse, that they intentionally mis-characterized the nature of our employment relationship to avoid accountability.

Inconsistency with other employment determinations by CalPERS

Due to various reasons, several letters from other cases were not admitted into evidence. The letters show that CalPERS used a double-standard and did not apply the common law rules consistently in my case. Those letters are in Exhibit F. Below are some relevant excerpts from the letters that show some of the inconsistencies:

Mr. Kramer – “Although the agreement purports to establish an independent contractor/employer relationship between RGS and the City, our Membership Analysis and Design Unit has reviewed the agreement language and the duties of your former position to determine that your employment through RGS is under the common law control of the City.”

CalPERS could easily have made the same determination in my case based on the contract language that allowed CalPERS to terminate my contract for any reason, and by comparing my work with that of staff in my unit.

Mr. Rudat – “Although the contract purports to establish a relationship of ‘independent contractor’ for the city of Stockton, under common law principles the position of Fire Chief is an employee position which is under the control of the City For example

- Services being performed are part of the employer’s normal operations
- Worker has the right to end his relationship at any time
- Services are required to be performed on the employer’s premises, or at a location designated by the employer
- Payment to working by the hour, week or month and worker is paid through the employer’s payroll system

- All necessary facilities, tools, materials and other equipment is furnished by the employer
- Worker wears a uniform, displaying government (city) identification, driving a marked vehicle, using forms and stationary [sic] that indicate person is representing a governmental agency
- Worker is required to comply with employer's instructions/direction about when, where, and how he is to work, as instructions may be written or verbal, in the form of manuals, procedures"

In comparison, I was paid hourly out of the State Treasury, not CalPERS payroll system, and I did not wear a uniform (but no CalPERS employees do). Other than that, all the common law factors that were applied in the Rudat case also apply to me.

Mr. Carnahan – "The Office of Audits issue a final report in September 2011 that found you were improperly classified as in independent contractor for your employment as the Executive Director for Southern California Public Power Authority (SCPPA)..."

Ms. Buzzini – "You were a common law employee of CPHRC." "We considered your representation that the current receiver [Clark Kelso] is an active member of CalPERS."

CalPERS determined that Ms. Buzzini, an attorney, was a common law employee, but not of the state. Mr. Kelso, the prison receiver, was determined by CalPERS to be a common law employee of the state, and it is said that when he retires he will be the highest paid CalPERS retiree ever.

Regarding Mr. Bennett – "Copies of emails submitted for review, data from 2007 to 2012, indicate the District controlled, assigned, directed, instructed, and reviewed the IT services Mr. Bennett provided to the District." "Based on a review of the services agreements from 2010 to 2012, either party could terminate the relationship at any time within notice."

So Mr. Bennett was an IT employee who was determined to be a common law employee. The way he was controlled by his employer is somehow distinguishable from the way I was controlled, even though I also had my assignments "assigned, directed, instructed and reviewed" by CalPERS. **The right to terminate the relationship was also deemed indicative of an employer/employee relationship in this case.** The double-standard is obvious. Mr. Bennett's employer, who disagreed with the determination, would probably agree.

The letters quoted above regard a personnel information services director, a fire chief, an executive director, an attorney, a prison receiver, and an IT worker. All are highly-skilled positions and all were determined by CalPERS to be sufficiently "controlled" to qualify as common law employees. But Robbie Almeida, who, exactly like CalPERS IT staff, had to provide

weekly status reports, collect output from the computer room and distribute it, attend staff meetings, take help desk calls and process them according to established procedures, fill out ITS020 forms and get customer approval and manager signatures to run jobs, run adhoc data extracts as requested by the manager, and follow a multitude of CalPERS policies and procedures, was determined *not* to be under CalPERS “control”. This shows that the interpretation of the control factor was arbitrary and capricious.

Below is an excerpt from the determination letter sent to me by CalPERS, which is also found in Exhibit F:

“CalPERS did not control the manner and means of how you accomplished the projects, but rather reviewed your work product only to the extent of completeness, cohesiveness, and ability to integrate with other systems. Due to the nature of the project, there existed a need for a check and balance with every phase and entity involved with the continual legacy operations and peripheral systems. Any coordination with CalPERS supervisors, managers, other contractors and staff was essential in the process and development of the multiple stages of each contracted phase of development. It was imperative that CalPERS maintain control for the result, not the manner and means of how the program code was to be developed. With systems available only at specific times, and at the CalPERS location, you were expected to retrieve information from staff and introduce system upgrades and implementations accordingly.” (underline original)

Judge Wong specifically cited this paragraph from the letter in Factual Finding 24. This paragraph is pure doublespeak. Please re-read the paragraph above. It actually states, “It was imperative that CalPERS maintain control...,” in an attempt to *deny* that CalPERS had control. Does it matter that the control at “every phase” was “for the result” if it was exercised *throughout* the process? Doesn’t a “check and balance with every phase and entity” count as control of the “manner and means” of doing work? What if the check revealed the need for a change or fix? Isn’t control exerted in this way over a worker of any type done with the purpose of effecting the final result? The same description could be used for almost any work product – regardless of how much control is exercised, the employer is ultimately only concerned with the end “result”.

If I asked someone to bake me a cake, and all I wanted was the final product, I would provide the specifications and not check at each step of the way whether they measured correctly, sifted the flour, added the liquid ingredients in the correct order, etc. (that would be controlling). I would wait until presented with the cake and either accept it or send it back if it didn’t match what was requested. If the person making the cake was a professional baker, there may not be reason to check at each step of the way. But CalPERS on the one hand insists how highly professional and competent I was, while also insisting there was a need to evaluate

my every step. They not only had the right to control, they exercised it with respect to many details. IT work is not baking, so wanting to check each step out of concern for the final result may be prudent, but it is still *controlling*. It is incongruous to suggest that that paragraph is not describing control of manner and means.

Regular Business

In Factual Finding 31, Judge Wong suggests that IT work is not part of regular business. I respectfully disagree and contend that he is mistaken on this point. The California Code of Regulations (22 CA ADC § 4304-4) specifically addresses the computer services industry and provides the following example of "Service in principal's regular business" (bold added):

Service in principal's regular business. Procedures or systems that satisfy the business needs of the principal are part of the principal's regular business. For example, if the procedures or systems provide an accounting process that is necessary for the operation of a bank or a retailer, those processes are part of the business of the bank or retailer. However, services for a short period to install or create a hardware or software system for a principal are not services in the regular course of the principal's business. In the same way, services for a short period of time to adjust software to the needs of the principal are not in the regular course of the principal's business. **On the other hand, services for the operation and use of a system and software used by a principal are generally in the regular course or part of the principal's business. Continued operation, use, maintenance and adjustment of data or software to satisfy continuing needs or variation in the conduct of business are in the regular course of the principal's business.**

Based on the bank example above, my eleven years of work was clearly part of CalPERS regular business. I worked on "continued operation, use, maintenance and adjustment of data or software." Consider the following from the California Constitution, Article 16, Section 17(a):

The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. **The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries.** The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system. (Bold added).

Since virtually all administration of the retirement system is done electronically, and since the areas I worked on were directly related to retirement and death benefit calculation and payment, I was very much involved in CalPERS regular business.

Besides day-to-day work on the maintenance of the core Retirement Information and Benefits System, there were times when I was called upon to fix system issues that had to be fixed or else the over 450,000 monthly warrants would not have been generated for our members. If the monthly roll that assures "prompt delivery of benefits" is not part of CalPERS regular business, I don't know what is. I performed maintenance and enhancement work on the primary systems related to "participants and their beneficiaries" for eleven years straight. I presented evidence and witnesses to that effect. Even if it was not clear to Judge Wong, perhaps due to unfamiliarity with details of how the retirement system operates, it was abundantly obvious to CalPERS, and yet their defense tactic was to mislead Judge Wong by suggesting, in contradiction to the California Code of Regulations, that my work was not part of CalPERS "regular" business.

League of Cities

Cities know they are supposed to follow CalPERS rules. Exhibit G is from the League of California Cities dated October, 2015, that discusses CalPERS Audits and Related Issues:

From page 6 - However, **merely labeling someone who meets the common law employee factors a "consultant" or "independent contractor" or entering into an employment agreement are not likely, in and of themselves, to be sufficient to avoid the employee designation**

From page 7 - If an employee was eligible for CalPERS membership and not enrolled, **there is no statute of limitations and he or she can be retroactively enrolled effective to years or decades earlier. (Bold added).**

Making an exception for CalPERS as an employer is unfair both to those employers who follow the rules, and those who violate the rules and are held accountable. Both groups would be rightfully angry to know that the agency that holds them accountable not only turns a blind eye when it comes to their own agency, but exempts themselves from the consequences when caught. It is indecent and demoralizing to send CalPERS auditors out to audit employers when they know that CalPERS does not follow the same rules.

Laches

On page 14 of the CalPERS State Reference Guide it states,

FAILURE TO TIMELY ENROLL A MEMBER

It is the employer's responsibility to determine if its employees are eligible for CalPERS membership. If an employer fails to enroll an eligible employee into CalPERS membership within 90 days of qualifying, when the employer knows or can reasonably be expected to have known of that eligibility, the employer will be required to pay all arrears costs for the member contributions and a \$500 administrative cost per member. The employer shall not pass on to an employee any costs assessed due to untimely enrollment. (G.C. section 20283)

CalPERS says, "It is the *employer's* responsibility to determine if its employees are eligible for CalPERS membership." (italics added) The laches defense suggests that I should have known I was eligible for membership. Yet CalPERS, who of all employers *should know* who should be enrolled in CalPERS could not reasonably have been expected to have known in my case?

Judge Wong granted laches on the very weak premise that my awareness that according to IRS rules, independent contractors should not have to fill out vacation requests, constituted knowledge that I was eligible for CalPERS membership under the PERL and had cause of action. This is a weak premise because, besides the fact that it was a single non-determinative factor, I am not asking for employment benefits implied by an IRS common law employment relationship. I am requesting membership according to the rules of the PERL, something of which I was completely unaware at that time. CalPERS knew they were requesting that I fill out vacation requests, so by the same logic, and according to G.C. section 20283, they should also have known that I was eligible for CalPERS membership and enrolled me timely, exactly as employers are required to do. Instead, I am being punished for CalPERS' violation of their own rule set out in the PERL.

I would like to dispute Factual Finding 17, where Judge Wong states that in January 2003, I began feeling I was being "treated as an employee instead of an independent contractor". My testimony was taken out of context. I had said that I felt that when CalPERS asked me to fill out vacation requests, that was not treating me like an independent contractor, based on IRS rules. If I answered yes to a question that included the words "treated as an employee" it was only in regard to that single factor, which is not sufficient to make a determination. I stated that I did not understand the implications of being treated that way. I was hired by CalPERS as a technical specialist, not a legal or policy expert.

Judge Wong discounts my contention that I would have simply been out of a job if I complained about the vacation requests. I don't understand why, since CalPERS acknowledges that I could have been let go at any time, and I and others testified that CalPERS managers made that abundantly clear. Having to fill out vacation requests was an annoyance to me because I knew CalPERS should not have insisted on it. As primary breadwinner for my family at that time, it was certainly not worth losing my job over a vacation request. The vacation issue did not mean that I had reason to believe I was a common law employee – as previously stated, I simply believed it wasn't appropriate for a supposed independent contractor. Most of my time was spent focused on doing the work, and the issue of vacation requests was something that did not come up on a regular basis.

I am also confused by Judge Wong's statement in Factual Finding 24 that if I believed one of the managers (actually, there was more than one) had "unfettered authority and discretion to terminate" me doesn't support a right to control because "such unfettered authority and discretion is wholly inconsistent with the State Civil Service Act. (*Skelly v. State Personnel Board* (1975)". CalPERS stated in the Employer Questionnaire that "CalPERS could have terminated the relationship without cause according to the SOW." I testified that I saw CalPERS managers exercise their ability to terminate consultants for reasons unrelated to the contract on numerous occasions. I only became aware of *Skelly* after reading about it in Judge Wong's proposed decision. Do *Skelly* rights even apply to common law employees under the PERL? I find the suggestion that I should not have feared for my job because of *Skelly* farfetched. I never saw it used by other contractors who were fired prior to termination of their contracts. The only way to attempt to invoke *Skelly* would have been possibly through litigation to prove I was a common law employee under Civil Service rules, which I now know is an extremely costly and Sisyphean effort when going against CalPERS. I have to wonder if Judge Wong was somehow not aware of the fact that the SOWs gave CalPERS the right to terminate the relationship without cause when he wrote Factual Finding 24, so that he missed *the* most important control factor.

The California Code of Regulations (22 CA ADC § 4304-4) provides this guidance for the computer services industry:

If the principal has the right to discharge the computer consultant at will, without cause, and without incurring continuing liability for breach of contract, it is strong evidence that the computer consultant is an employee. Where the computer consultant would feel a sufficient threat from the possibility of discharge, layoff or refusal to re-engage and its consequences to cause him or her to yield to the pressure of the principal's

methods in regard to performing the details of the work, an employment relationship is indicated.

Certainly, those of us who were contract employees were aware of that control. One IT manager had a "15 minute rule" for how long it would take her to escort out a consultant, and another IT manager told us that we were there to make her life easier, and if there were any issues between us and staff, *regardless of whose fault it was*, we would be "out of here." I feel like that attitude is why a Senior Programmer/Analyst felt comfortable enough to come and do a daily "VPL" (Visible Panty Line) check on me and a colleague. The same programmer, in a meeting in the manager's office, offered my colleague a seat in his lap due to the lack of chairs; the manager heard him, chided him that CalPERS had a "Zero Tolerance Policy" (of which we were all aware of due to mandatory harassment training), and continued her meeting. He was later promoted to Supervisor by the same manager. Was getting him in trouble worth possibly losing my job? No. I was able to set him straight by telling him to knock it off. But these are just some of the consequences of CalPERS allowing "unfettered authority and discretion to terminate" and adopting a strategy of using a shadow workforce that bypasses civil service hiring requirements.

Taken to its logical conclusion, based on this decision, CalPERS now has license to maintain an entire workforce of contract employees because they are not part of CalPERS core business, and because it is up to them to inform CalPERS of any employment violations committed by CalPERS. CalPERS doesn't have to use the civil service process when it doesn't want to, so it has the option to save millions in retirement contributions if it hires an IT staff that is all contracted.

Some final thoughts on laches - allowing it does not seem to be in CalPERS best interest. Does the CalPERS board want to allow laches to be claimed where there is no statute of limitations? If a statute of limitations is needed, it should be set in law so that it can be applied consistently and not arbitrarily. Then I would have at least known about it instead of being hit with it five years into the case after incurring so much unnecessary expense. The appeal was supposed to be an appeal of the original determination, not a place for bringing up every possible new motion to see what would stick. Why can't I claim laches on CalPERS laches?

From the same precedential decision, 05-01, cited earlier,

Moreover, even if it were concluded that Respondent willingly agreed to become an independent contractor, benefits established for a public reason may not be waived by private agreement. (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal. 3d 341, 358). The Legislative declaration of purpose contained in section 20001

clearly establishes the public reason for PERL benefits and Respondent may not waive the benefits.

Can benefits established for a public reason be waived by laches? It doesn't seem right that the employer, who should have followed G.C. section 20283 and enrolled the member timely, is rewarded for its lack of timeliness by waiting even longer and placing responsibility on the employee. In the Cargill case that CalPERS supported up to the California Supreme Court, CalPERS said it had to act to bring common law employees into membership in order to maintain its status as a pension system with the IRS. Is that not the case now?

One definition of laches is, "unreasonable delay pursuing a right or claim in a way that **prejudices** the [opposing] party." (bold added). Is CalPERS really prejudiced by enforcing the PERL on an employer? Despite the delays, much of which falls on CalPERS, there is and remains sufficient evidence and witness testimony to make a determination. The board should consider whether they are only allowing the laches argument because of who the employer is, and if that is the case, it is not right to apply a double-standard. Inherently, retirement errors frequently go back years and occasionally decades. In such cases, allowing laches only when it is convenient for CalPERS as an employer but not other employers gives the appearance of impropriety. The prejudice in this case is to CalPERS, the employer, not CalPERS, the fiduciary. It seems that the fiduciary duty would outweigh the selective application of laches to protect the employer. CalPERS, the fiduciary has been silent throughout this case, and should welcome the opportunity to hold an employer accountable. It is time for the fiduciary to weigh in with what makes the most sense for the system, not a single employer. It doesn't make sense for CalPERS to set a precedent by allowing laches to limit the Board's authority.

Additional Employment Relationship Information

There are several additional exhibits and information that help characterize the employment relationship I had with CalPERS.

Exhibit H – This is an assignment notification form that was used during the time I was working on RIBS Priority Service Requests. Whenever someone on the team (staff or consultant) was given a new assignment, we were given this Assignment Notification from our manager. Note the many detailed instructions on "how" to do the work, including the sequence of the tasks.

Exhibit J – This "Procedure for Monitoring Help Desk Tickets" shows the detailed instructions we were to follow when assigned to monitor Help Desk tickets as part of the Legacy Applications Support Unit. My roles included Primary Monitor, Alternate Monitor and Fulfiller. The attached emails show that both staff and consultants were assigned these duties.

Exhibit K – This shows several pages of system documentation from the Benefits Maintenance Function List for the (now obsolete) RIBS system. Please note that along with other staff and consultants, I am listed in the ITSB SME column (Subject Matter Expert) for several areas.

Exhibit L – This is an email that indicates my ongoing relationship with CalPERS. It is an email from an IT manager about my next contract/Statement of Work (SOW).

The California Code of Regulations (22 CA ADC § 4304-4) also provides this guidance for the computer services industry:

The principal may also provide office procedure and policy manuals, desk or office space, clerical support, mail distribution and receptacle, office supplies, and telephone. When such facilities are provided in the same manner as they are provided for the principal's recognized employees, it is evidence that the computer consultant is performing services as an employee. When the computer consultant performs services along with or alongside recognized employees, the lack of distinctly separate circumstances between the recognized employees and the computer consultant will be evidence that the computer consultant is performing services as an employee.

The only difference CalPERS could come up with in the hearing to distinguish staff from employees was cubicle size. Besides being inconsequential, it does not even hold, as I had a staff-size cubicle for years, and in recent years staff cubicles have been reduced in size to be more in line with consultant cubicles.

As I testified and was confirmed by at least one other witness, a CalPERS manager also set my rate. We were told in 2002 that from that date forward there was a set rate for consultants working on the legacy systems. I don't know if that information was shared with outside vendors who might have wanted to bid on contracts, but if it wasn't that does not seem like the proper way to do a competitive bid.

The California Code of Regulations (22 CA ADC § 4304-4) also provides this guidance for the computer services industry:

Where the hourly rate is negotiated between the principal and the consultant, it is not evidence of employment or independence. Where the hourly rate is set by the principal, it is evidence of employment and where the hourly rate is set by the consultant it is evidence of independence.

During the time I went direct to CalPERS, I believed I was a sole proprietorship. For eight years straight, even though I submitted numerous std. 204 forms as requested by CalPERS, they did not issue me a 1099 as they are required to do by the IRS. Fortunately, for CalPERS, I knew that I did not need the 1099 in order to pay my taxes.

Conclusion

The original determination done by CalPERS was wrong and ignored the evidence provided. It was done inconsistently from how CalPERS has made determinations in numerous other cases, with no logical explanation as to how my case differs. From CalPERS own precedential decision, "If the principal has the right to control the manner and means of accomplishing the desired result, whether or not that right is exercised, an employer-employee relationship exists." For eleven years, CalPERS clearly had right to control me and my work.

At appeal, the focus should have been on the original determination, and CalPERS should have provided expert testimony as a fiduciary, not just an employer. Judge Wong ignored clear indications of CalPERS control and appears to have accepted CalPERS suggestion they did not control my work and that my work was not part of CalPERS regular business, despite evidence to the contrary. The doctrine of laches was introduced at the last minute, and is not appropriate in this case. There is a public reason for PERL benefits and there is no statute of limitations, so benefits granted under the PERL should not be arbitrarily and capriciously denied when the Board has the ability to correct the error.

Respectfully submitted,



Roberta Almeida

Exhibit A

(some names redacted)

Almeida, Roberta

From: [REDACTED]
Sent: Tuesday, January 22, 2002 1:24 PM
To: [REDACTED]; Roberta Almeida; [REDACTED]
Cc: [REDACTED]
Subject: Hours

As I stated previously (several times), you are to work no more than 40 hours per week. If you are out sick or on personal leave, you must get prior approval to make up the time.

Also, it seems that some of you are coming in at different times (other than what I have down for your normal work hours) during the week. Please e-mail with your work hours. If you have to leave early, will be out for a longer lunch period, delaying your lunch, or have personal business to attend to during the day (outside the office), please let me know ahead of time (and I don't mean 5 minutes before) and mark your calendar. I don't need to know the details, unless of course you are behind schedule (then, we'll have lots to discuss...).

I will adhere to these same rules. My calendar is current.

If you have any questions, please let me know.

Almeida, Roberta

From: [REDACTED]
Sent: Tuesday, May 07, 2002 2:04 PM
To: [REDACTED]; Roberta Almeida
Cc: [REDACTED]
Subject: Reminder, again...

Just a few reminders:

- No one is to work overtime unless pre-approved by me or Dale.
- Unless Dale or I previously agreed in advanced, everyone is expected to work an 8 hour day. If you need to leave early one day and will make up the time within the same week, let me know ahead of time. You are scheduled to work 40 hours a week, but I am also relying on you being here for an 8 hour day. This means no adjusting your 40 hour week without prior approval. Also, please make sure your calendar is current.
- DO NOT work on anything that has not been assigned to you by me or Dale. This means even those little requests by the user to fix a SAR issue, reprinting, researching, whatever. If you receive a request from a user or anyone else besides me or Dale, forward it on to me and I'll address it. We are on a very strict schedule and budget and deadlines to meet.
- I am to be CC'd on all correspondence with the users, scheduling unit, DBA, Production Services, etc..

[REDACTED]
(916) 341-2433
[REDACTED]

Exhibit B

INDEPENDENT CONTRACTOR OR COMMON LAW EMPLOYEE FOR USE BY STATE AGENCIES

The purpose of this article is to advise State agency secretaries and directors and other State hiring authorities of the common law and statutory distinctions between an independent contractor and an employee. This article is intended for use by California State agencies. Effective immediately, this article supersedes Management Memo 95-18.

This article also advises State agency secretaries and directors that employers (including State agencies) are subject to various State and federal statutes governing the collection of payroll taxes for all employees (including contractors determined to be "employees" under common law or statutory employee definitions). These payroll taxes may include social security and medicare taxes, federal income tax withholding, unemployment insurance, State employment training tax, State nonindustrial disability, and State personal income tax withholding. The amount of taxes required by federal and State law to be withheld from State employee earnings and the related employer tax contribution (where applicable) are reported by the State Controller to federal and State tax authorities on the appropriate forms and to the employee on the *Wage and Tax Statement (Form W-2)*.

However, employers, including State agencies, are not required to withhold taxes from independent contractor earnings. Instead, the State is required to file an information return, IRS Form 1099-MISC, for certain payments made to independent contractors. In addition, effective January 1, 2001, California employers must report independent contractors, using the *Report of Independent Contractor(s) (DE 542)*, to the Employment Development Department. For additional information regarding the reporting of independent contractors to California, contact:

Employment Development Department (EDD)
Independent Contractor Hotline
Telephone: (916) 657-0529

The Internal Revenue Code imposes substantial penalties on employers (refer to page 4) for improper classification of employees as independent contractors. Penalties incurred by a State agency will be paid out of the State agency's support appropriation.

CLASSIFICATION OF INDEPENDENT CONTRACTOR/EMPLOYEE FOR FEDERAL TAX PURPOSES

The IRS *Employer's Supplemental Tax Guide* (Publication 15-A) provides the following guidelines, effective January 1, 2000:

- Behavioral Control. Factors related to a business's right to direct and control how the worker performs the task.
- Financial Control. Factors related to a business's right to control the business aspects of the worker's job.
- Relationship of the Parties. Factors showing the type of relationship between the worker and the business.

The application of these factors determines common law employee or independent contractor status for federal tax purposes. Consult Publication 15-A for details and examples to help properly classify the workers. For additional information, access the IRS Web site at www.irs.gov and follow the links to all IRS forms and publications.

The IRS Form SS-8 (*Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*) should be used when, at the discretion of the State agency and after consultation with EDD's Audit Section, it is necessary to seek IRS assistance in determining independent contractor/employee status (refer to Independent Contractor/Employee Determination Assistance on page 3).

CLASSIFICATION OF INDEPENDENT CONTRACTOR/EMPLOYEE FOR STATE TAX PURPOSES

The EDD administers California's employment tax laws. The California Code of Regulations, Section 4304-1, defines an employee and lists the rules generally applicable to common law determinations of employment. The EDD has prepared a list of 24 common law elements to help State agencies distinguish between an independent contractor and an employee (refer to Attachment I).

The information in the "Employee" column of Attachment I represents situations in which the 24 elements indicate that the contractor is subject to the employer's direction and control. Therefore, when a State agency retains the right to direct and control the work performed under a contract, a common-law employer/employee relationship is created even if the State agency (employer) allows the contractor (employee) freedom of action.

To determine if an independent contractor/employee relationship exists for State of California tax purposes, it is not necessary that all 24 elements in Attachment I be considered or weighted equally. Because this determination process can be relatively subjective, program managers may find it useful to compare their working relationship with the contractor to their relationship with civil service employees. In that comparison,

if the following statements are true, it is presumed that the individual to be engaged is an employee and, once such a conclusion is made, it is not necessary to continue to apply the 24 elements:

- The worker can quit or be terminated at any time without being legally obligated for failure to complete the job.
- The manager (or designated person) assigns, reviews, and supervises the individual's work.
- The worker performs services that are a part of the regular operation of the State agency.

State program managers who contract with individuals for personal and other services must review Attachment I to determine if the State agency has effectively retained the right to direct and control the contractor or if, in the performance of contract services, the contractor is independent.

In addition, existing State law confers statutory employee status on an individual under specific circumstances in spite of the fact that the individual is determined to be an independent contractor using common law. The following are the categories of statutory employees:

- Artists, authors, and creators of copyrighted work
- Unlicensed construction workers
- Homeworkers

State agencies that intend to contract with individuals in the groups listed above should consult the *California Employer's Guide* (DE 44) or call EDD's Audit Section at (916) 464-2500 for advice regarding their employment status.

INDEPENDENT CONTRACTOR/EMPLOYEE DETERMINATION ASSISTANCE

The State agency program manager who is required to certify the independent contractor/employee status based upon the criteria provided in this document may find it difficult to reach a definite determination and may need assistance. In such instances, the program manager should call:

Employment Development Department
Audit Section
Telephone: (916) 464-2500

In addition, at EDD's Web site (www.edd.ca.gov), you can access forms and publications such as the DE 44, *Determination of Employment Work Status for Purposes of State of California Employment Taxes and Personal Income Tax Withholding* (DE 1870), *Employment Determination Guide* (DE 38), DE 542, and various Information Sheets.

The DE 38 is a self-assessment worksheet to be used to determine whether a worker is most likely an employee or an independent contractor. The EDD will also provide verbal guidance or, if deemed necessary, a written opinion based on data provided by the

requesting State agency on the DE 1870. In most cases, an employment status determination results in the same finding under both the State and federal guidelines. In rare instances where the employment status is different under the State and federal guidelines, please consult with EDD's Audit Section for assistance.

STATE POLICY: CONTRACT WITH INDEPENDENT CONTRACTORS ONLY

After reviewing the contents of Attachment I and the statutory employee categories listed on page 3 of this article, the State agency program manager directly responsible for the work to be performed should determine whether the contract being reviewed creates or is likely to be executed in a manner that could create an employer/employee relationship outside the civil service system. State law and policy require that, except where exempted by the California Constitution, all State contracts should be executed in a manner consistent with the establishment of independent contractor status.

State agency contracts with common law employees **may be in violation of** Government Code Section 19130(c), which requires that:

All persons who provide services to the state under conditions the [State Personnel] board determines constitute an employment relationship shall, unless exempted from civil service by Section 4 of Article VII of the California Constitution, be retained under an appropriate civil service appointment.

Therefore, State program managers whose contracts appear to be less than fully consistent with this State policy should consult with EDD regarding employee and independent contractor determinations and with their agency's personnel manager regarding proper civil service or other classifications.

FEDERAL PENALTIES FOR INDEPENDENT CONTRACTOR/EMPLOYEE MISCLASSIFICATION

If the IRS determines that a contractor is, in fact, an employee, the penalty assessments against the offending State agency include:

- A liability for failure to withhold income taxes, equal to 1.5 percent of the wages plus 20 percent of the social security and medicare taxes that should have been paid by the employee.
- A liability for the unpaid portion of the employer social security and medicare taxes.
- A penalty for the State agency's failure to withhold 31 percent of a noncorporate independent contractor's pay if the contractor:
 - Was paid more than \$600 annually.
 - Did not provide a federal employer identification number to the State agency.
 - Failed to pay income taxes (the penalty is equal to 100 percent of what the contractor would have paid in taxes).

Depending on the number of independent contractor/employee misclassifications committed by a State agency and the length of time the misclassification remains uncorrected, the liabilities and the penalty assessments can be substantial.

State policy is that **federal penalties** incurred by a State agency **will be paid out of that agency's support appropriation**.

Therefore, to avoid the misclassification of a worker who signs a personal services contract, carefully apply the elements listed on Attachment I or contact EDD for assistance and/or to obtain additional information.

The Financial Integrity and State Manager's Accountability Act of 1983 (Government Code 13400 et seq.) makes the head of each State agency responsible for establishing and maintaining systems of internal control within their agency. Management's responsibility includes communicating the system requirements to employees and providing assurance that the system is functioning as prescribed. The objectives of a system of internal control are to safeguard assets, check the accuracy and reliability of accounting data, promote operational efficiency, and assure compliance with laws, regulations, and policies.

Although the responsibility for the internal control system cannot be delegated to an outside agency, assistance to determine that such systems exist may be provided by audits performed either by departmental internal audit functions or by the various control agencies. For example, EDD may conduct studies of policies and procedures related to employment requirements and tax administration. Also, the State Auditor, the State Controller, and the Director of the Department of Finance may perform reviews of State agencies' internal control systems to ensure that such controls are adequate to meet the objectives noted above.

If you have any questions regarding this article, please call EDD's Audit Section at (916) 464-2500.

JAMES R. LEGLER, Chief
Field Audit and Compliance Division, Central Operations
EDD Tax Branch

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
1. Instructions	A worker who is required to comply with instructions about when, where, and how to work is ordinarily an employee. The instructions may be in the form of manuals or written procedures that show how the desired result is to be accomplished. Some workers may perform services without receiving instructions because they are highly proficient and conscientious workers. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.	An independent contractor decides how to do the job, establishes his or her own procedures, and is not supervised. The entity engaging his or her services is only interested in the end result.
2. Training	Training of a worker by an experienced employee working with him or her, by correspondence, by required attendance at meetings, and by other methods is a factor of control indicating that the employer wants the services performed in a particular manner. This is especially true if the training is given periodically or at frequent intervals.	An independent contractor ordinarily uses his or her own methods and receives no training from the principal. He or she is not required to attend meetings.
3. Integration	If the worker's services are so integrated into an employer's operations that the success or continuation of the business depends on the performance of the services, it generally indicates employment.	If the individual's performance of service and those of the assistants establish or affect his or her own business reputation and not the business reputation of those who purchase their services, it is an indication of an independent contractor relationship.
4. Services Rendered Personally	If the services must be rendered personally, it indicates the employer is interested in the methods as well as the results.	An individual's right to substitute another's services without the principal's knowledge suggests the existence of an independent relationship.
5. Hiring Assistants	A worker performs services for an employer who hires, supervises, and pays assistants. If a worker hires and supervises assistants at the direction of the employer, he or she is acting as an employee in the capacity of a foreman for or representative of the employer.	An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor.
6. Continuing Relationship	The existence of a continuing relationship between a worker and the person for whom he or she performs services indicates an employer-employee relationship. If the arrangement consists of continuing or recurring work, the relationship is considered permanent, even if the services are rendered on a part-time basis, are seasonal in nature, or if the person actually works for only a short time.	The relationship between an independent contractor and his or her client ends when the job is finished.

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
7. Set Hours of Work	The establishment of set hours of work by the employer is a factor of control. If the nature of the occupation makes fixed hours impractical, a requirement that the worker work at certain times is an element of control.	An independent contractor is the master of his or her own time.
8. Full-Time Work	Full-time work for the business is indicative of control by the employer since it restricts the worker from doing other gainful work. Full-time does not necessarily mean an eight-hour day or a five-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and the customs in the locality. These conditions should be considered in defining full-time. Full-time services may be required even though not specified orally or in writing.	An independent contractor is free to work when he or she chooses and to set his or her daily or weekly schedule. An independent contractor would normally perform services less than full time for one principal.
9. Work Done on Premises	Doing the work on the employer's premises, on a route, or at a location designated by an employer implies employer control, especially where the work is of such a nature that it could be done elsewhere. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision unless the worker has the option as to whether he or she wants to use these facilities. However, the fact that work is done off the premises does not indicate freedom from control since some occupations (for example, construction workers) are necessarily performed away from the premises of the employer.	Doing work away from the principal's premises when it could be done on the principal's premises indicates a lack of control, especially when the work is free from supervision.
10. Order or Sequence Set	If a worker must perform services in the order or sequence set by the employer, it shows that the worker is not free to follow an independent pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of the occupation, the employer either does not set the order of the services or sets them infrequently. Control is sufficiently shown, however, if the employer retains the right to do so.	If the principal is not interested in the order or sequence by which the individual completes the work, there is an indication that there is a lack of control over the manner and means by which the work is performed.
11. Reports	The submission of regular oral or written reports indicates control since the worker must account for his or her actions.	An independent contractor is not required to file reports that constitute a review of his or her work. (However, reports related only to an end result are not an indication of employment or independence.)

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
12. Payments	<p>Payment by the hour, week, or month generally represents an employer-employee relationship</p> <p>The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.</p>	<p>Payment on a commission or job basis is customary where the worker is an independent contractor. Payment by the job includes a lump sum computed by the number of hours required to do the job at a fixed rate per hour.</p>
13. Expenses	<p>Payment of the worker's business and travel expenses by the employer indicates control over the worker.</p>	<p>A worker who is paid on a job basis and who has to take care of all incidental expenses is generally an independent contractor. Since the person is accountable to no other person for the expenses, the person is free to work according to his or her own methods and means.</p>
14. Tools and Materials	<p>The furnishing of tools, materials, etc., by the employer indicates control over the worker. In some occupations and industries, it is customary for workers to provide their own tools, which are usually small hand tools; in that case, workers may be considered to be employees.</p>	<p>When a worker furnishes tools and materials, especially when a substantial sum is involved, there is an indication of independence.</p>
15. Investment	<p>The furnishing of all necessary facilities by the employer tends to indicate an employment relationship.</p> <p>Facilities generally include equipment or premises necessary for the work, but not tools, instruments, clothing, etc., that are commonly provided by employees in their particular trade.</p>	<p>A significant investment by the worker in facilities used by him or her in performing services for another tends to show independent contractor status.</p> <p>In order to be significant, the investment must be real, essential, and adequate.</p>

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
16. Profit or Loss	When workers are insulated from loss or are restricted in the amount of profit they can gain, they are usually employees. The opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement, is not considered profit or loss.	<p>The possibility of a profit or loss for the worker as a result of his or her services generally shows independent contractor status. Profit or loss implies the use of capital by the worker in an independent business. Whether a profit is realized or loss suffered generally depends on management decisions; that is, the one responsible for a profit or loss can use his or her own ingenuity, initiative, and judgment in conducting the business or enterprise. Factors that affect whether or not there is a profit or loss are whether the worker:</p> <ul style="list-style-type: none"> • Hires, directs, and pays assistants. • Has his or her own office equipment, materials, or other facilities for doing the work. • Has continuing and recurring liabilities or obligations. • Succeeds or fails depending on the relation of his or her receipts to his or her expenditures. • Agrees to perform specific jobs for prices agreed upon in advance. • Pays expenses incurred in connection with the work. <p>Independent contractors typically can invest significant amounts of time or capital in their work without any guarantee of success.</p>

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
17. Works for More Than One Person or Firm	It is possible that a person may work for a number of people or firms and still be an employee of one or all of them because he or she works under the control of each firm.	Work for a number of persons or firms at the same time usually indicates an independent contractor status because the worker is usually free, in such cases, from control by any of the firms.
18. Offers Services to the General Public	If a worker performs services for only one person, does not advertise his or her services to the general public, does not hold licenses or hire assistants, and performs services on a continuing basis, it is an indication of an employment relationship.	The availability of services to the general public usually indicates independent contractor status. This may be evidenced by the worker having his or her own office and assistants, hanging out a "shingle" in front of his or her own home or office, holding business licenses, maintaining business listings in telephone directories, or advertising in newspapers, trade journals, magazines, etc.
19. Right to Fire	If an employer has the right to discharge an individual at will and without liability, that worker is considered an employee. The employer exercises the control through the ever present threat of dismissal, which causes the worker to obey instructions. A restriction on the employer's right to discharge in a labor union contract does not detract from the existence of an employment relationship.	An independent contractor cannot be discharged as long as he or she produces a result that measures up to his or her contract specifications. However, the relationship can be terminated with liability.
20. Right to Quit	The right to quit at any time without incurring liability indicates an employer/employee relationship.	An independent contractor usually agrees to complete a specific job, and he or she is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.
21. Custom in Industry and Location	If the work is traditionally done by civil service employees under the direction of a supervisor, it is an indication of employment.	If the work is done by outside specialists, it is an indication of independence.
22. Required Level of Skill	A low level of technical skill is strong evidence of employment, since as the skill level declines, there is less room to exercise the discretion necessary for independence.	A high level of technical skill is important when combined with other factors such as owning a separate and distinct business.

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
23. Belief of the Parties	<p>It is an indication of employment if:</p> <ul style="list-style-type: none"> • Both parties (the worker and the State) believe the relationship is employment. • Either party believes that the relationship is employment. 	<p>If the parties agree that the relationship is one of independence, it may be. However, consideration should be given to the fact that many individuals do not know how employment determinations are made and believe they are independent contractors because they are told they are.</p>
24. Business Decisions	<p>Employees cannot make business decisions that would enable them to earn a profit or incur a financial loss.</p>	<p>Independent contractors make business decisions that enable them to earn a profit or incur a loss. Investment of the worker's time is not sufficient to show a risk of loss.</p>

Exhibit C

EMPLOYMENT RELATIONSHIP QUESTIONNAIRE (ER)

CalPERS
Agency

ROBERTA ALMEIDA
Individual

- 1. Please indicate who appointed Ms. Almeida and describe the interview/recruitment process, if applicable? (Please include a detailed written description.)

Records are not available prior to January 1, 2000, due to Y2K issues with various computer systems. The earliest record CalPERS has for Ms. Almeida's employment as a consultant is December 26, 2000. Ms. Almeida states that she began working for CalPERS as a consultant in 1998 and, based on the timelines of the projects she worked on prior to December 26, 2000, CalPERS does not dispute that date.

Specifics as to who appointed Ms. Almeida in 1998 and what the specific interview/recruitment process was at the time of her original hire as a consultant are also not available due to Y2K issues with various computer systems. However, each time Ms. Almeida was hired as a consultant, the company that employed her would have had to participate in a competitive process to either be a part of a Vendor Pool or a Spring-Fed Pool of contractors. Beyond qualification for and inclusion in those groups, Ms. Almeida's employer would have then been required to participate in the competitive process of either submitting a proposed quote for a particular Statement of Work (SoW) along with other companies in the specific Vendor Pool, or participating in the Request for Proposal process along with other companies in the specific Spring-Fed Pool.

- 2. Please provide the date Ms. Almeida began performing services for your agency, and also provide the separation date if applicable.

As previously stated, records for consultants are not available prior to January 1, 2000 due to Y2K issues. The earliest record CalPERS has for Ms. Almeida's employment as a consultant is December 26, 2000. Ms. Almeida states that she began working for CalPERS as a consultant in 1998 and, based on the timelines of the projects she worked on prior to December 26, 2000, CalPERS does not dispute that date.

3. Did she take an oath of office?

No, Ms. Almeida did not take an oath of office.

4. Describe the services performed by Ms. Almeida, and attach a duty statement, scope of work, or contract for services; also list the position title, if applicable. (Please include a detailed written description.)

From January, 2003 through June 30, 2004, Ms. Almeida was hired as a consultant to:

- Assist CalPERS in the overall management of the Retirement Information Benefits System (RIBS) Legacy support efforts, for example: assistance with setting goals and managing the project work plan,
- Provide status reports to management and others as necessary,
- Assist in the liaison process as directed with CalPERS Program User Staff,
- Work in conjunction with assigned staff to develop task specifications, participate in project status meetings as required by the Information Technology Services Division (ITSD) Retired Member Unit Systems Manager,
- Provide all services on site with the Benefit Services Division (BNSD) Project Manager as the primary point of contact,
- Assist CalPERS staff to manage the work efforts and to meet requirements as directed by the Retired Member Unit Systems Manager,
- Perform technical analysis and programming services as directed by ITSD Retired Member Unit Systems Manager,
- Perform unit, system, customer acceptance, regression, and integration testing when applicable,
- Create documentation when applicable according to ITSD standards,
- Interact with program area staff when required as directed,
- Perform Version Control/Quality Assurance,
- Provide weekly status to management, and
- Provide a weekly report on project status to the Retired Member Unit Systems Manager and make recommendation(s) for any needed changes, including project staffing. Report will include:
 - Progress—Items completed this week,
 - Plans—Items to be completed next week,
 - Problems—Problems encountered while attempting to work on a task, and
 - Escalation of issues that requires Retired Member Unit Systems Manager involvement.

From June 20, 2003 through December 31, 2004 (extended to July 31, 2005), Ms. Almeida was hired as a consultant to/for:

- Maintenance and support of the existing RIBS system, especially as it applies to the Pre and Post Retirement Death Subsystems and the support of various RIBS development, testing and staging environments,
- Provide analysis and design efforts in support of new initiatives as identified by the BNSD/Applications Development and Support Section User Group,
- Develop modifications to existing systems, as directed by the RIBS Unit Manager,
- Create or modify development and testing environments as directed by the RIBS Unit Manager,
- Provide mentoring to project team members in use of Job Control Language, Natural (programming language), software requirements identification processes and in the Pre and Post Death processes as directed by the RIBS Unit Manager,
- Evaluate all projects proposed solutions to verify that the solution is consistent with RIBS Unit standards,
- Provide application quality assurance for RIBS Unit projects,
- Provide technical assistance to RIBS Unit members,
- Provide support for major initiatives leveraging existing RIBS infrastructure,
- Provide knowledge and expertise to other applications and project efforts as they relate to the RIBS system,
- Attend project, staff, and management meetings as required, and
- Mentor technical and program area staff as required.

From June 20, 2005 through July 31, 2006 (extended to December 31, 2006), June 27, 2006 through December 31, 2007, December 15, 2007 through June 30, 2008 (extended to October 31, 2008), and October 27, 2008 through October 31, 2009,

Ms. Almeida was hired as a consultant to:

- Analyze service requests and problem reports and prepare impact analysis and estimates of schedule and effort,
- Analyze, design, code test, and install into production approved modifications to existing applications,
- Assist as directed in the review of design, code and documentation of CalPERS developers,
- Create or modify development and testing environments,
- Facilitate Joint Application Development sessions and conduct design and code walk-throughs,
- Prepare documents in accordance with Systems Development Life Cycle and CalPERS/ Institute of Electrical and Electronics Engineers standards, including and not limited to functional requirements document, technical design specifications documents, test plan, system and program documentation,

- Prepare written status reports and participate in project meetings as required, and
- Provide knowledge transfer to technical and program area staff as required.

The SoWs for the contracts listed above are attached for reference.

5. How many other individuals perform the same services for your agency?

Based on prior organization charts, CalPERS had 11 staff members and two other consultants working on Legacy Retired Systems. Although both CalPERS employees and consultants worked on Legacy Retired Systems, the consultants' work was defined separately depending on pending system code freezes. The consultants performed defined bodies of work rather than the more routine work allocated to CalPERS staff.

6. Is there a written agreement? If so, please attach a copy, as well as any other documents. (Are there Letters of Engagement or similar writings? If so, please provide all Letters of Engagement and or other agreements.)

All of Ms. Almeida's work at CalPERS as a consultant was governed by various SoWs. The SoWs are attached for Ms. Almeida's work as a consultant during the time periods of:

- January, 2003 through June 30, 2004,
- June 20, 2003 through December 31, 2004 (extended to July 31, 2005),
- June 20, 2005 through July 31, 2006 (extended to December 31, 2006),
- June 27, 2006 through December 31, 2007,
- December 15, 2007 through June 30, 2008 (extended to October 31, 2008), and
- October 27, 2008 through October 31, 2009.

Unfortunately all SoWs for work Ms. Almeida completed as a consultant prior to 2003 have been designated as confidential destruct material and have been destroyed consistent with CalPERS retention schedule for contracts. Once a contract expires or is terminated, the Contract Management Section (CMS) in the Operation and Support Services Division stores it in-house for two years. The contract is then sent to the State Records Center (SRC), where it is stored for an additional five years. SRC notifies CMS when the five years has passed, and a decision is made whether to continue storing the contract or have it sent to confidential destruction. CMS did not elect to continue to store any contracts Ms. Almeida completed work under that were more than seven years past the original or extended completion date and they were consequently sent to confidential destruction.

7. Where are the services performed (her office, home, the agency's premises, etc.)? Who decides where the services are performed?

Ms. Almeida performed her work onsite at CalPERS. CalPERS decided where the services were to be performed because of security issues with writing and modifying code. During the time period Ms. Almeida performed work as a consultant, there were not as many options to securely work remotely as exist at the present time. As such, access to the code Ms. Almeida worked on was limited to CalPERS servers on CalPERS premises.

8. Does Ms. Almeida have her own place of business?

It is unknown whether or not Ms. Almeida maintained her own place of business.

9. For the services in question, does she operate under his/her own name or the agency's name?

All the work Ms. Almeida produced as a consultant was done so under her own name at CalPERS and not as a representative of CalPERS. When she performed work as a consultant, Ms. Almeida did not represent CalPERS internally or externally at any time.

10. Does the individual offer the same type of services performed for your agency to the general public or other agencies?

Yes, Ms. Almeida performed the same type of services for Foundation Health Federal Services and Electronic Data Systems. Ms. Almeida's resume is included with each attached SoW for further reference.

11. Does your agency have first call on her time or services? (Please include a detailed written description.)

CalPERS did not specify a set schedule for Ms. Almeida. She worked during normal business hours because that is when access to the systems she needed to do her work was available. However, CalPERS routinely works around consultants' schedules and does not track their time for supervisory purposes. CalPERS does use the information consultants provide regarding time worked for reconciliation with their submitted invoices for payment. Ms. Almeida agreed to the set parameters that detailed CalPERS expectations regarding her work product and her time frames for deliverables, but beyond those, CalPERS did not require first call on her time or services.

12. Is Ms. Almeida required to attend agency meetings? If so, for what purposes? (Please include a detailed written description.)

Ms. Almeida was most likely extended an invitation to staff meetings and other agency meetings, but was definitely not required to attend. All consultants are welcome to participate in staff events such as holiday parties in the areas in which they work, but are not paid for their time while attending such events or helping to plan for such events.

13. Who determines the hours of her work?

Ms. Almeida was provided access to systems during regular business hours; but CalPERS did not determine her specific hours of work. Accordingly, Ms. Almeida was responsible for managing her own time and for determining her own specific hours of work.

14. Specifically describe the time-base (full-time/weekly hours....etc.).

The time base Ms. Almeida worked varied from full time to extended periods of absence. For example, during her pregnancy, Ms. Almeida took time off while under an SoW. As her workload at the time could be absorbed by other consultants, CalPERS did not request to either terminate the SoW or that she be replaced by another consultant; both of which were permissible under the SoW.

15. Is she required to do the work personally?

Ms. Almeida is not required to do the work personally, but she was required to sign security forms regarding access. If Ms. Almeida preferred to delegate the work to one of her associates, CalPERS would have required notification and the associate would have also had to complete the security forms.

16. Aside from delegating, can she subcontract the work to others?

Ms. Almeida would have been able to subcontract the work to others as long as her associates completed the necessary security forms for access to CalPERS systems.

17. Is Ms. Almeida required to follow specific oral or written procedures? (Please include a detailed written description and provide supportive documents.)

Ms. Almeida was provided written procedures in the form of a checklist that provides documentation as to how work is processed and that ensures stability in the systems environment. The checklist is attached for further reference.

18. Does the agency provide training? (Please include a detailed written description and provide supportive documents.)

No, CalPERS did not provide any training to Ms. Almeida.

19. Is Ms. Almeida required to submit oral or written reports? (If yes, Please include a detailed written description and provide supportive documents.)

Ms. Almeida was required to submit written documentation on the changes she made to CalPERS systems in the course of her work so that CalPERS staff would be able to maintain them in the future.

20. Does the agency provide her with a formal evaluation? (If yes, Please include a detailed written description and provide supportive documents.)

No, CalPERS did not provide Ms. Almeida with a formal evaluation.

21. Has Ms. Almeida rendered services to this agency before? If so, when, and under what circumstances?

No, Ms. Almeida had not rendered any services to CalPERS prior to the work she completed as a consultant.

22. Does anyone one at this agency have the right to control the manner and means of her work, or is she responsible only for the end product? (Please include a detailed written description and provide supportive documents.)

No one at CalPERS had the right to control the manner and means of Ms. Almeida's work. Ms. Almeida was responsible only for the end product.

23. Is Ms. Almeida's work (and if not who can):

- Directed by anyone?

CalPERS management defined the workload associated with the SoW. Once it was defined, no one at CalPERS directed Ms. Almeida's work. Ms. Almeida was responsible for contacting the end users at CalPERS to gather information from them in order to determine how she was going to complete the workload associated with the SoW.

- Supervised by anyone?

Ms. Almeida was not supervised while working as a consultant at CalPERS. Ms. Almeida was required to provide documentation of

the time she worked in order to support the invoices she provided for billing purposes.

If so, what is the name and title of her supervisor?

- Reviewed by anyone?

Yes, Ms. Almeida's final work product was reviewed by a senior staff person upon completion to ensure it met the expectations laid out in the SoW. Ms. Almeida's work was not, however, reviewed otherwise.

24. Who determines the sequence of tasks?

Ms. Almeida worked with her customers directly to determine their priority in terms of her end work product. Ms. Almeida then determined the sequence of tasks herself.

25. Please check facilities or equipment, furnished by the agency, which Ms. Almeida uses to perform services.

- | | |
|--|---|
| <input checked="" type="checkbox"/> Office | <input checked="" type="checkbox"/> Machinery (Computer—for security and compatibility issues) |
| <input checked="" type="checkbox"/> Office Supplies | <input type="checkbox"/> Tools |
| <input type="checkbox"/> Letterhead | <input type="checkbox"/> Uniform |
| <input type="checkbox"/> Automobile | <input checked="" type="checkbox"/> Security Badge (Specifically identified as a consultant badge with restricted hours for building access as compared to CalPERS employees) |
| <input type="checkbox"/> Business Cards | |
| <input type="checkbox"/> None | |
| <input checked="" type="checkbox"/> Other (Software tools) | |

26. Does she bill the agency for services rendered?

Yes, Ms. Almeida billed CalPERS for services rendered.

27. Please check basis on which she is paid.

- Flat salary Hourly rate Lump sum/by the job
 List pay rates/dates they applied if applicable
 Other, (bonuses, profit sharing, uniform allowances).

Please explain:

Ms. Almeida billed CalPERS for her time and materials. CalPERS did not pay Ms. Almeida any bonuses, and she was not enrolled in any profit sharing or uniform allowance programs.

28. Check the following benefits this individual receives:

<input type="checkbox"/> Income tax withholding	<input type="checkbox"/> Workers Compensation
<input type="checkbox"/> Retirement	<input type="checkbox"/> Vacation
<input type="checkbox"/> Health Benefits	<input type="checkbox"/> Sick Leave
<input type="checkbox"/> Life Insurance	<input type="checkbox"/> Unemployment Insurance
<input type="checkbox"/> Other, please explain _____	<input type="checkbox"/> Not Applicable _____

Does the agency reimburse this individual for expenses, e.g., travel, hotel, professional fees, licenses, membership dues? (If yes, Please include a detailed written description and provide supportive documents.)

No, CalPERS did not reimburse Ms. Almeida for any expenses, and did not provide any benefits to her.

If so, what is the reimbursement process? _____

29. Can the agency terminate the relationship at any time without cause?

Yes, CalPERS could have terminated the relationship at any time without cause according to the termination clause in the SoW.

30. Can this individual quit at any time without liability to the agency?

Yes, Ms. Almeida could have quit at any time without any liability to CalPERS.

31. Did agency have the individual complete PERS-AESD-139 (Notice of Exclusion)? If so, attach a copy of the completed form to this questionnaire.

No, Ms. Almeida did not complete a PERS-AESD-139 form.

32. In your opinion, is this individual an employee of the agency?

No, Ms. Almeida was not a CalPERS employee for the time period she worked for the agency as a consultant.

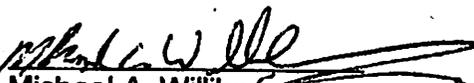
Explain: Ms. Almeida provided services to CalPERS in accordance with the SoWs she signed. CalPERS did not restrict Ms. Almeida from simultaneously working for other agencies and/or companies, did not prescribe the manner in which she completed her work, did not previously employ her as an employee before contracting with her for her services as a consultant, did not require her attendance at meetings that were mandatory for employees, did not provide any of the benefits it does for its

employees, did not supervise her daily work or provide her with any sort of formal performance evaluation, did not provide her with any training or require her to attend the training it mandates for all of its employees, and did not allow her to represent CalPERS to either internal or external customers. Ms. Almeida was a consultant and was hired for her existing skill set to work on time-limited project-oriented assignments.

COMMENTS:

Information in this questionnaire may be used to determine CalPERS membership and may be a potential fiscal liability to the individual and/or the agency.

Prepared by:


Michael A. Willingham
Chief, Human Resources Division
CalPERS

Date: February 18, 2011

Please complete and return to:
Gail Donoghue
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

Fax: (916) 795-4166/Attention Gail

Exhibit D

(some names redacted)

Almeida, Roberta

From: [REDACTED]
Sent: Thursday, September 13, 2007 2:53 PM
To: ITSB, Legacy Application Support
Cc: [REDACTED]
Subject: Work Hours

Importance: High

THIS ONLY APPLIES TO INDIVIDUALS WHO DO NOT HAVE A LUNCH PERIOD.

Please update your work hours on the Legacy Website to include a lunch period. Federal Labor Laws require the anyone who works 6+ hours in a day to take a lunch period.

If you need assistance to update your work hours, please contact Earl Rogers.

Thank you,

[REDACTED]
CalPERS Manager - Legacy Applications Support Unit
Technology Services and Support Division, ITSB
Phone: (916) 795- [REDACTED]
email: [REDACTED]

Exhibit E

(some names redacted)

Almeida, Roberta

Subject: Updated: Magic Hands-On Training Class
Location: ITSD, Technology Training Academy

Start: Tue 8/16/2005 8:30 AM
End: Tue 8/16/2005 11:30 AM

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: ITSB Customer Support Center; [REDACTED]; Almeida, Roberta; [REDACTED]

Optional Attendees: [REDACTED]

Non-ITSD staff, please report to the front desk of ITSD's reception area, room 2348, before 8:30 so that we may get started on time. *You will be signing out a training badge at this time.* **IF YOU ARE MORE THAN 10 MINUTES LATE, YOU WILL NEED TO RESCHEDULE FOR ANOTHER CLASS.**

If you have had a change in plans and cannot attend this class, **PLEASE NOTIFY Jennifer Porter (x3-2932) or the Customer Support Center (CSC) (x3-3017) immediately.**

Books will be provided; just bring a writing instrument. Some people find the lab to be chilly, so you may want to bring a sweater.

Thank you. We look forward to seeing you in class!

Exhibit F



California Public Employees' Retirement System
Benefit Services Division
P O Box 942711
Sacramento CA 94229-2711
TTY (877) 249-7442
888 CalPERS (225-7377) phone (916) 795-3933 fax
[www calpers ca gov](http://www.calpers.ca.gov)

Reply to 470

Refer to [REDACTED]

January 9, 2013

Mr Glen H Kramer
[REDACTED]

Dear Mr Kramer

Re Illegal Retiree Employment

CalPERS received notification that you are working for the City of Menlo Park through Regional Government Services (RGS) under an agreement to perform Management and Administrative Services. As you know, you retired from the position of Personnel and Information Services Director from the City of Menlo Park on December 30, 2010.

Although the agreement purports to establish an independent contractor/employee relationship between RGS and the City, our Membership Analysis and Design Unit has reviewed the agreement language and the duties of your former position to determine that your employment through RGS is under the common law control of the City. Therefore, your post retirement employment is subject to the restrictions in the retirement law.

Section 21220(a) of the California Government Code states in pertinent part that "A person who has been retired under this system, for service or disability, shall not be employed in any capacity thereafter by the state, the university, a school employer, or by a contracting agency, unless he or she has first been reinstated from retirement." Section 21202 further provides that "A person employed in violation of Section 21220 shall be reinstated to membership in the category in which, and on the date on which, the unlawful employment began."

To continue working in this position, you will have to retroactively reinstate from service retirement effective **February 1, 2012**. You will then be responsible for reimbursing CalPERS for all retirement benefits you have received since that date, and payment must be made of all retirement contributions that should have been deducted from your earnings. A Reinstatement form Service Retirement Application is available in the publication **Reinstatement from Retirement** available on the CalPERS Website [www calpers ca gov](http://www.calpers.ca.gov) for downloading and printing.

Your active account will be credited with the full amount of service credit and an actuarial equivalent of your accumulated contributions and interest that you had when

**APPROVED
TO RETAIN**

Mr Glen H Kramer
January 9, 2013
Page 2

you retired Your employer will have to report payroll and submit retirement contributions for you If it is our determination that you should be retroactively reinstated, your account will be credited with the appropriate service credit and contributions

Reinstatement from retirement affects the cost-of-living adjustment (COLA) benefits that you will be entitled to receive upon re-retirement in the future The amount of COLA is based upon the year in which you retire Your reinstatement will change the base year of your future retirement and will, therefore, also change the date that you will be entitled to begin receiving the COLA during your future retirement

If you wish to remain retired you must cease employment immediately and notify me by February 9, 2013

In the event that we do not receive a response from you regarding this situation by February 9, 2013, we will stop your retirement warrant on April 1, 2013 and reinstate you retroactive to February 1, 2012.

If you have any questions please contact me My direct number is (916) 795-3120 or you may use our toll free number 888 CalPERS (888-225-7377) and leave a message for me to return your call

Sincerely


LIZ BURKE
Retirement Program Specialist II
Post Retirement Administration

cc City of Menlo Park

2013/02/09 11:06:37 87 4459

CID



California Public Employees' Retirement System
Benefit Services Division
P O Box 942711
Sacramento CA 94229-2711
TTY (877) 249-7442
888 CalPERS (225-7377) phone (916) 795-3933 fax
www.calpers.ca.gov

Reply to 470
Refer to [redacted]

July 18, 2012

Mr. David Rudat
[redacted]

Dear Mr Rudat

Re Illegal Retiree Employment

Thank you for providing a copy of the **PROFESSIONAL SERVICES AGREEMENT FOR INTERIM FIRE CHIEF** through the corporation, The Queen's Nugget, INC dba DRC Services with the City of Stockton

Although the contract purports to establish a relationship of "independent contractor" for the City of Stockton, under common law principles the position of Fire Chief is an employee position which is under the control of the City. For example

- Services being performed are part of the employer's normal operations
- Worker has the right to end his or her relationship at any time
- Agency/Employer has the right to discharge or dismiss worker at any time
- Services are required to be performed on the employer's premises, or at a location designated by the employer
- Payment to worker by the hour, week or month and worker is paid through employer's payroll system
- All necessary facilities, tools, materials and other equipment is furnished by the employer
- Worker wears a uniform, displaying government (city) identification, driving a marked vehicle, using forms and stationary that indicate person is representing a governmental agency
- Worker is required to comply with employer's instructions/direction about when, where, and how he is to work, as instructions may be written or verbal, in the form of manuals, procedures

The City of Stockton is a Chartered City and under section 1602 Fire Chief it states in pertinent part, "The Fire Department shall be under the control, management, and direction of a Fire Chief The Fire Chief shall be appointed by the City Manager and shall hold that position at the pleasure of the City Manager The Fire Chief shall have management, control, and direction of personnel The Fire Chief shall have full power

**APPROVED
TO RETAIN**

10:16:39 07/2 2 58 150
Mr David Rudat
July 18, 2012
Page 2

to detail any officer or member of the Department to such public service as is necessary

Section 21220(a) of the California Government Code states in pertinent part that "A person who has been retired under this system, for service or disability, shall not be employed in any capacity thereafter by the state, the university, a school employer, or by a contracting agency, unless he or she has first been reinstated from retirement." Section 21202 further provides that "A person employed in violation of Section 21220 shall be reinstated to membership in the category in which, and on the date on which, the unlawful employment began"

Our records indicate that you have not applied, nor been approved, for reinstatement from retirement which would enable you to work in the permanent position. To continue working in this position, you will have to retroactively reinstate from service retirement effective May 10, 2011. You will then be responsible for reimbursing CalPERS for all retirement benefits you have received since that date, and payment must be made of all retirement contributions that should have been deducted from your earnings. A Reinstatement form Service Retirement Application is available in the enclosed publication Reinstatement from Retirement.

Your active account will be credited with the full amount of service credit and an actuarial equivalent of your accumulated contributions and interest that you had when you retired. Your employer will have to report payroll and submit retirement contributions for you. If it is our determination that you should be retroactively reinstated, your account will be credited with the appropriate service credit and contributions.

Reinstatement from retirement affects the cost-of-living adjustment (COLA) benefits that you will be entitled to receive upon re-retirement in the future. The amount of COLA is based upon the year in which you retire. Your reinstatement will change the base year of your future retirement and will, therefore, also change the date that you will be entitled to begin receiving the COLA during your future retirement.

Please be aware that if your reinstatement is to an employer other than the one you retired from, your future retirement benefits, such as health insurance, dental insurance and death benefits will be those contracted for by your current employer and may not be the same benefits that you were previously entitled to receive. We suggest that you contact your employer's Personnel Office and clarify any questions you may have about the benefits that they offer their employees and retirees.

If you wish to remain retired, then you must cease employment immediately and notify me by August 10, 2012.

10:16:40 07/27 68 151

Mr David Rudat
July 18, 2012
Page 2

In the event that we do not receive a response from you regarding this situation by August 10, 2012, we will stop your retirement warrant on September 1, 2012 and reinstate you retroactive to May 10, 2011.

If you have any questions, please contact me My direct number is (916) 795-3120 or you may use our toll free number 888 CalPERS (888-225-7377) and leave a message for me to return your call

Sincerely,



LIZ BURKE
Retirement Program Specialist II
Retirement Support

Enclosure
cc City of Stockton



California Public Employees' Retirement System
Benefit Services Division
P.O. Box 942711
Sacramento, CA 94229-2711
TTY: (877) 249-7442
888 CalPERS (or 888-225-7377) • (916) 795-0385 fax
www.calpers.ca.gov

Reply To: Section 470
CalPERS ID: [REDACTED]

January 25, 2013

Bill D. Carnahan
[REDACTED]

Dear Mr. Carnahan:

Re: Unlawful Retiree Employment

The Office of Audits issued a final report in September 2011 that found you were improperly classified as an independent contractor for your employment as the Executive Director for Southern California Public Power Authority (SCPPA) through BD Carnahan Management Services, INC. You retired from the position of Public Utilities Director at the City of Riverside on March 11, 2000.

Under common law control principles your employment as the Executive Director was, in fact, as an employee of the SCPPA and, therefore, subject to CalPERS membership. For example, the agreement provides:

- You shall provide services as Executive Director pursuant to the decisions and directions of the Board of Directors of SCPPA (Board) and the by-laws of SCPPA.
- You shall devote such time as the Board deems appropriate.
- The duties were ongoing, with no fixed deliverables
- The Executive Director is authorized to assign tasks and direct and evaluate SCPPA employees
- Other business activities performed by you must be reviewed by the Board
- Compensation was set by the Board
- The Board shall evaluate the Executive Director's performance, and compensation may be adjusted based on the evaluation.
- Compensation is an annual salary paid monthly.
- Only SCPPA may terminate the agreement
- Overhead costs are paid in accordance with SCPPA guidelines.
- Duties may not be assigned or delegated without SCPPA approval.

California Government Code (GC) section 20028(b) defines an employee as "Any person in the employ of a contracting agency". GC Section 20125 provides that 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.

GC Section 21220(a) states in pertinent part, "A person who has been retired under this system, for service or disability, shall not be employed in any capacity thereafter by the state, the university, a school employer, or by a contracting agency,...unless he or she has first been reinstated from retirement...unless the employment, without reinstatement, is authorized by this article...". GC Section 21202 provides, "A person employed in violation of Section 21220 shall be reinstated to membership in the category in which, and on the date on which, the unlawful employment occurred."

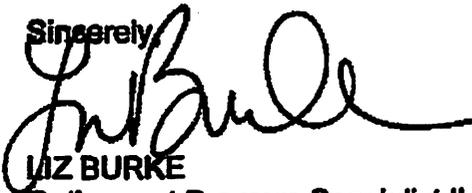
Since you should have been brought into active CalPERS membership on March 13, 2000, you must be mandatorily reinstated retroactive to that date. With this mandatory reinstatement, your monthly retirement benefit will terminate, you will be responsible for reimbursing CalPERS for all the retirement benefits you have received since that date and must make payment of all the member retirement contributions that should have been deducted from your employment earnings. Your active member account will be credited with the full amount of service credit and an actuarial equivalent of the accumulated contributions and interest you had when you retired. SCPA will be required to report retroactive payroll and submit employer retirement contributions.

Reinstatement affects the cost-of-living adjustment (COLA) benefit you will be entitled to receive upon re-retirement in the future. The commencement of COLA is based upon the year in which you retire. Your reinstatement will change the base year of your future retirement and will, therefore, also change the date you will be entitled to begin receiving the COLA benefit during your future retirement. Please review the enclosed publication **Reinstatement From Retirement** for additional information.

Your last retirement warrant will be dated March 1, 2013 and you will be advised of the retirement overpayment amount by separate letter. Your employer will be contacted by our Customer Account Services Division for direction in enrolling you into CalPERS membership and reporting payroll.

If you have any questions, please contact me. My direct number is (916) 795-3120 or you may use our toll free number 888 CalPERS (888-225-7377) and leave a message for me to return your call.

Sincerely,



LIZ BURKE

Retirement Program Specialist II
Post Retirement Administration

cc: Scott N. Kivel
Southern California Public Power Authority
Enclosure



Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
888 CalPERS (or 888-225-7377) FAX (916) 795-3005

June 7, 2010

Linda Buzzini
[REDACTED]

Dear Ms. Buzzini:

This letter relates to your eligibility for membership in the California Public Employees' Retirement System (CalPERS) for services performed at the California Prison Healthcare Receivership Corporation (CPHRC) from June 1, 2006 to May 29, 2009. We apologize for the delay it has taken to finalize our determination. A determination such as the one in your case requires intensive review of all facts and documentation presented. We appreciate your patience as we completed our review of your case.

CalPERS has reviewed and evaluated the information provided by both you and the CPHRC and has made the following determinations: 1) You were not a common law employee of the State of California when you provided services for CPHRC from June 1, 2006 to May 29, 2009; 2) You were a common law employee of CPHRC during that time period; 3) The CPHRC does not constitute "the state" or "a state employer" for purposes of the California Public Employees' Retirement Law (PERL) and has not contracted with CalPERS as a public agency; 4) Since your service with CPHRC was not performed for a CalPERS-covered employer, you are not eligible for CalPERS membership for that service and; 5) The service under CPHRC does not constitute state service under the PERL and cannot be included as CalPERS service credit and compensation.

As a result, your service under CPHRC cannot be used in the calculation of any CalPERS retirement benefit. The following information has been prepared for you to review in light of the determinations presented above.

I. CalPERS Has Determined You Were Not an "Employee" of the State of California for Purposes of the Public Employees' Retirement Law while Providing Services to CPHRC.

The CalPERS Board of Administration (Board) has specific authority under Government Code section 20125 to "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." Government Code section 20028(a) defines "employee" in pertinent part as: "Any person in the employ of the state, a county superintendent of schools, or

California Public Employees' Retirement System
www.calpers.ca.gov

the university whose compensation, or at least that portion of his her compensation that is provided by the state, . . . , is paid out of funds directly controlled by the state, . . . excluding all other political subdivisions, municipal, public and quasi-public corporations.” In order to meet the definition of state employee under the PERL, there are two separate requirements that both must be met: (1) the individual must be in the “employ” of the state; and (2) the individual must be paid out of funds directly controlled by the state. If either criteria is not met, the individual is not an “employee” and therefore is not entitled to CalPERS membership.¹

CalPERS, along with the courts, look to the common law employment test to determine employee status for CalPERS retirement purposes.² 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. If an employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists.

Other factors to be taken into consideration when determining employee status for CalPERS retirement purposes are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the parties believe they are creating the relationship of employer-employee.³

¹ See *Metropolitan Water District of Southern California v. Superior Court* (2004) 32 Cal.4th 491, 502-504 (also referred to as the “Cargill” case). See also *Adcock v. Board of Administration* (1979) 93 Cal.App.3d 399 which determined that an inheritance tax referee was not a state employee for retirement purposes because his compensation was not paid out of funds directly controlled by the state, the state controller had limited control over the referee positions, individuals could accept other employment so long as it did not conflict with referee duties and the Legislature failed to designate the positions as state employees or PERS members; 25 Cal.Ops.Atty.Gen. 248 (1955) which determined that the State Emergency Relief Administration was a state agency and that persons employed there and paid by the State Controller’s warrant from funds in the state treasury were state employees for retirement purposes; 31 Cal.Ops.Atty.Gen. 194 (1958) which determined California National Guard civilian employees were not state employees for retirement purposes where they were paid from federal funds by the federal government but appointed by the Adjutant General, a state officer, and 68 Cal.Ops.Atty.Gen. 194 (1985) which determined that where an in-home supportive services program aid recipient hired and supervised a domestic services worker, the worker may be a state employee for the purposes of the PERL, if controlled by the state and paid by the state.

² *Metropolitan Water District of Southern California v. Superior Court, supra*, 32 Cal.4th 491. See also CalPERS Precedential Decisions *In the Matter of the Application for CalPERS Membership Credit by Lee Neidengard v. Tri-Counties Association for the Developmentally Disabled*, Precedential Decision Case No. 05-01 (2005) and *In the Matter of the Application to Contract with CalPERS by Galt Services Authority*, Precedential Decision Case No. 08-01, (2008).

³ The factors to consider are enunciated in *Tieberg v. Unemployment Ins. Bd.* (1970) 2 Cal.3d 943, 949 and *Empire Star Mines v. California Employment Com.* (1946) 28 Cal.2d 33, 43-44. See also CalPERS Precedential Decisions *In the Matter of the Statement of Issues of Lee Neidengard, Respondent and Tri-Counties Regional Center, Respondent*, Precedential Case No. 05-01 (2005) and *In the Matter of the*

CalPERS has determined for PERL purposes that you were not an employee of the state because you were not a common law employee of the state and were not paid out of funds directly controlled by the state when you provided services to CPHRC. This determination is primarily based on the following:

- The records presented do not demonstrate that the state or California Department of Corrections and Rehabilitation (CDCR) exercised control over the manner or means of how you accomplished your services for CPHRC. To the contrary, we have concluded that that CPHRC exercised control over the manner and means of how you accomplished your services for CPHRC.
- You were hired by and signed an Employment Agreement to work for the CPHRC as a "Staff Attorney." Nothing presented shows the state or CDCR extended an offer of employment to you or hired you. Further, nothing presented confirms you underwent a competitive examination for a state civil service job (such as a staff counsel position) or applied for a Career Executive Assignment (CEA) or Exempt Position to provide services for CPHRC or that you were recruited or hired through the state civil service, CEA or Exempt process. You were not provided the civil service protections afforded state civil service employees.
- Information presented suggests you took an unpaid leave of absence from state employment so that you could go work for the receiver/CPHRC. In addition, in November 2007, you requested a leave from CPHRC, so that you could reinstate into state service from December 10 – 27, 2007, then retire from state service effective December 28, 2007, and return back to pay status at CPHRC.
- Compensation issued for your services as a CPHRC staff attorney were not paid out of funds directly controlled by the state. You were paid out of a bank account established by CPHRC pursuant to federal court order and were not paid by warrants issued by the State Controller's Office.
- No standard state payroll or personnel documents were presented such as the Absence and Additional Time Worked Report [634 form] to report time worked or the Notice of Personnel Action form to show you were appointed or hired into a state position.
- Nothing presented confirms the state evaluated your services at CPHRC, approved or rejected merit salary adjustments or other changes in pay, or initiated disciplinary or other personnel action against you or on your behalf during the time you performed services for CPHRC.
- You were not provided the same benefits usually afforded to full-time state employees (such as CalPERS health benefits, CalPERS retirement, state vision and dental programs, and the like.) You did not accrue any state vacation, sick leave or annual leave credit while you performed services for CPHRC.
- No tax documents were provided, such as W-2 form, identifying your employer as the State of California for the period of time you provided services to CPHRC.

- No documents were presented to evidence a belief by the state that you and the state had created the relationship of employer-employee for the services you provided to CPHRC.

II. CalPERS Has Determined You Were An Employee of CPHRC.

CalPERS has determined that you were a common law employee of CPHRC when performing services from June 1, 2006 to May 29, 2009. This determination is primarily based on the following:

- CPHRC controlled the manner and means of how you accomplished your services for CPHRC. Your signed Employment Agreement states: "CPHRC reserves the right to change Employee's job title, duties, responsibilities, reporting level, compensation and benefits, as well as the CPHRC's personnel policies and procedures, at any time and for any reason or cause, upon notice to Employee."⁴ In practice, it appears you were initially supervised by the original receiver or his chief of staff and later by the general counsel and/or the current receiver.
- Your offer of employment appears to have come directly from CPHRC.⁵ Your Employment Agreement provides that the employment relationship is between you and CPHRC, characterizes your service as an "at will" employee of CPHRC, and does not state that you would be a state employee.⁶
- Compensation issued for services rendered for CPHRC, as a staff attorney, was not from funds directly controlled by the state. Instead, records confirm compensation originated from a bank account established by the receiver/CPHRC pursuant to federal court order.⁷ Payroll records confirm that CPHRC issued your compensation on a twice-monthly basis.
- You were paid a bi-monthly salary initially of \$6250 (\$12,500 per month or \$150,000 per year), which exceeds the high end of the pay range for a staff counsel or similar position with the State of California (i.e. the high end of the pay range for a Staff Counsel IV position is approximately \$10,477 per month.)
- You were provided benefits not usually available to state employees performing legal services, but that were available to some employees of CPHRC, such as an amount equal to 30% of your annual salary for cash-in-lieu of benefits (at least initially through approximately October 2007), a monthly car allowance, and the possibility for a performance bonus of up to 20% of your annual base salary. Pursuant to your Employment Agreement, you also were entitled to receive a severance payment, under certain conditions, of up to 6 months salary at the salary in effect at the time employment terminated. State employees are not paid

⁴ See paragraph 1.1 of the Employment Agreement between you and CPHRC.

⁵ Letter dated 5/15/2006, signed by Mr. Robert Sillen (the initial court appointed receiver, 2006-2008).

⁶ See opening paragraph and paragraph 1.1. of the Employment Agreement between you and CPHRC.

⁷ See Order Appointing Receiver, filed February 14, 2006, section III, paragraph E.

severance pay. Further, you had the option to receive employee benefits through plans intended only for CPHRC employees.⁸

- Time sheets completed were CPHRC issued and not the standard state issue timesheet forms.
- Any salary adjustments were subject to CPHRC's review, discretion and approval.
- Per your Employment Agreement, CPHRC retained the right to direct and control the services rendered, including prohibiting you from engaging in other employment while subject to the terms of the Employment Agreement. In your position as a staff attorney, you were required to report to the receiver (CPHRC), and your services were rendered at premises operated by CPHRC, or you were directed to perform the services at places directed by CPHRC.
- Your Employment Agreement provided performance bonuses that were subject to the receiver's (CPHRC) discretion. CPHRC also agreed to reimburse you for business related travel expenses.
- Based upon our review of your Employment Agreement and other documents provided, the evidence presented appears to show that both you and CPHRC believed you were creating the relationship of employer-employee.

CalPERS considered additional information raised by you, such as the receiver's duties included carrying out the functions of the Secretary of CDCR. We note that the receiver's powers and authority are broader than those possessed by the Secretary and the receiver answers to the federal court and not to the Governor or any other state official. Additionally, we considered your contention that the state appropriated funds for CPHRC's operating costs. While the federal court ordered the state to appropriate funds and to reimburse all CPHRC costs through a fiduciary controlled CPHRC account, the expenditure of funds was controlled solely by CPHRC and only subject to the federal court's approval. The state had no control over how much or where the receiver spent the funds necessary to meet his mission. Therefore, while the state ultimately reimbursed the costs associated with your employment at CPHRC pursuant to court order, the state did not directly control the funds or account from which you were paid.

You also contend that other court-ordered duties/powers granted to the receiver/CPHRC included the hiring of CDCR staff in state civil service positions.⁹ The federal court's orders appear to suggest that the receiver/CPHRC would hire its own employees, independent consultants/contractors and would need to use CDCR employees in order

⁸ You were provided with CPHRC sick/vacation leave accruals (vacation initially accrued at 24 days per year per your Employment Agreement). We also understand that CPHRC offered a 401(k) Retirement Plan with employer contributions during your tenure.

⁹ However, these employees still maintained their State of California employment status and received benefits offered only to state employees and did not receive benefits offered to CPHRC employees such as cash-in-lieu of benefits, CPHRC performance bonuses, severance payments, CPHRC vacation credit and so forth.

June 7, 2010

to accomplish his mission.¹⁰ A June 2009 Office of the Inspector General (OIG) report also confirmed that receivership and CDCR employees work together under the receiver's direction to manage and implement his action plan to reform the state's delivery of prison medical care.¹¹ Notwithstanding these facts, as discussed above, we have determined that you were not a state or CDCR employee but were a CPHCR employee when working for CPHRC.

You also raise concerns about the "7,000+" employees who are already "working for the receiver" and have been enrolled into CalPERS.¹² You note that some employees of CPHRC have been converted to civil service employees. Our review of the documentation provided revealed that as the receivership moved through the initial phase, it became clear CPHCR would need to collaborate with CDCR to hire some new state employees, and also migrate some existing CPHCR staff members to state employment with CDCR, once the receivership terminated and control reverted back to the State of California. CalPERS has received no information that places you in the same category as those newly hired state employees or existing CPHCR employees who were to be converted to state employees in order to stay on with CDCR or the state after the receivership ends.

We considered your representation that the current receiver is an active member of CalPERS. We understand that this arrangement is based upon a specific written agreement between the Administrative Office of the Courts (AOC) and CPHRC to have Mr. Keiser and his services to the CPHRC. We have not been provided with any similar agreement for you or your services. We appreciate the information you provided and will continue to analyze the current receiver's agreement in accordance with applicable law, and take any appropriate actions as a result of this review.

In addition, we also considered the facts that you were issued a State of California employment ID (which specifically identified you as being an attorney for CPHRC) and an e-mail address similar to those given to state-employed CDCR employees. Nonetheless, neither of these facts demonstrates that the state or CDCR controlled the manner or means of how you performed your services. Moreover, since each could

¹⁰ For example, the Order Appointing Receiver, filed February 14, 2006, provides under section II, "Power and Authority of the Receiver" at paragraph B, that the Receiver has the power "to hire, fire, suspend, supervise, promote, transfer, discipline and take all other personnel actions regarding CDCR employees or contract employees who perform services related to the delivery of medical health care to class members." The order also provides in section III., "Office of the Receiver" at paragraph B: "The Receiver shall establish an Office of the Receiver . . . with staffing necessary to fully carry out his duties as set forth in this order. Upon approval from the Court, the Receiver shall set reasonable compensation and terms of service for each member of his staff, (including employees and/or consultants) and shall be authorized to enter into contracts with the employees or consultants of the Office."

¹¹ OIG report, June 2009, p. 5.

¹² See May 4, 2010 letter from you to CalPERS

¹³ We note this agreement was not approved until early 2008, approximately 18 months after you started to work for CPHRC. We were provided no such agreement for you. See also Order Appointing New Receiver, filed January 23, 2008, at p. 4.

have been done for the purposes of easing your access to CDCR facilities and to provide easier communication with CDCR personnel as needed to accomplish the receiver's mission, these facts are insufficient to support a determination that you were a state or CDCR employee.

For the reasons described above, we conclude that you performed services as a common law employee for CPHRC and not as a state or CDCR employee.

III. CalPERS Has Determined CPHRC Does Not Constitute "the State" or a "State Employer" for purposes of the PERL.

Government Code section 20030, defines "employer" as: "the state, the university, a school employer, and any contracting agency employing an employee." CPHRC does not meet the definition of an employer under the PERL, since it is not the state, the university, a school employer, or a contracting agency. Rather, CPHRC is a nonprofit public benefit corporation established pursuant to federal court order. Our determination is primarily based on the following:

- CPHRC is a non-profit public benefit corporation created to house the activities of the receiver appointed by the federal court¹⁴ and was organized to conduct activities aimed at lessening the burdens of government by serving as the office of the receivership established to take control of the delivery of medical services to California state prisoners confined by the CDCR.¹⁵ The federal court's order effectively took control over the function of delivering medical care to inmates from the state and transferred it to the receiver/CPHRC. Therefore, as a result of federal court order, the state, including the Governor, Legislature, and CDCR lost all authority to manage medical care operations in the prison system.¹⁶
- The receiver (CPHRC) is an agent of the federal court established as a result of the *Plata* litigation and is not an agent of any of the parties (i.e. the state) to that litigation.¹⁷ According to federal court order, "the receiver (CPHRC) and his staff shall have the status of officers and agents of this Court."¹⁸

¹⁴ The office of the receivership was established by U.S. District Court Judge Thelton Henderson as a result of the 2001 class action lawsuit (*Plata v. Schwarzenegger*) brought against the state over the quality of medical care in the State's 33-prison system. See the California Prison Healthcare Services website at <http://www.cprinc.org/about.aspx>.

¹⁵ Articles of Incorporation of California Prison Healthcare Receivership Corporation, paragraph 2.

¹⁶ Order Appointing Receiver explains the receiver's duties/powers included, the required submission of bi-monthly progress reports to the court, authority that could override California State law if necessary to complete court-ordered tasks, establishing an office in a location in consultation with the court, and monthly requests for disbursements for funds, originating from the State of California's general fund, which required court approval.

¹⁷ *SEC v. American Capital Investments*, 98 F.3d 11 33, 1143 (9th Cir. 1996); *SEC v. American Principal Holding, Inc. (In re San Vicente Medical Partners Ltd)* 982 F.2d 1402, 1409 (9th Cir.), cert. denied, 506 U.S. 873 (1992).

¹⁸ See Order Appointing Receiver, section II, paragraph F.

pay contributions.” In your case, in light of the determinations outlined above, we conclude that you have not qualified for membership for your CPHRC service and the state has not become obligated to pay contributions on your behalf. We further note that no employer or employee contributions were made to CalPERS for your CPHRC service, so there are no contributions to be refunded.

V. Conclusion

Based on the determinations above, we regret to inform you that your service as an employee of CPHRC from June 1, 2006 to May 29, 2009 does not qualify you for membership in CalPERS during that time frame. Accordingly, you cannot accrue CalPERS service credit for that service, or utilize compensation earned at CPHRC as final compensation for the purposes of calculating any CalPERS retirement benefits.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, **within thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations.

An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Your appeal should be mailed to the following address:

Lori McGartland, Division Chief
Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

If you have any questions or concerns regarding this matter, please contact me at

[REDACTED]

Sincerely,

[REDACTED]

Emily Perez de Flores, Manager
Member Reporting Section
Employer Services Division

Enclosure

cc: Clark Kelso, California Prison Care Receivership Corporation (CPHRC)
Anne Stausboll



California Public Employees' Retirement System
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
TTY: (916) 795-3240
888 CalPERS (or 888-225-7377) phone • (916) 795-3005 fax
www.calpers.ca.gov

February 11, 2013

Eileen Dienzo, Human Resource Manager
Rancho California Water District
P.O. BOX 9017
TEMECULA, CA 92589-9017

Dear Ms. Dienzo:

As you are aware, the California Public Employees' Retirement System (CalPERS) has conducted a review of the Information Technology (IT) services provided by Shawn Bennett to the Rancho California Water District (District) on or about July 1, 2007 to August 28, 2012, in response to Mr. Bennett's request for retirement benefits in CalPERS.

Based on the information presented for review by both Mr. Bennett and the District, CalPERS has determined Mr. Bennett provided services as a common law employee of the District from July 1, 2007 to August 28, 2012, and the documentation shows the services to be performed from July 1, 2010 to August 28, 2012 was expected on a full-time basis, eligible for membership in this System.

The District will be liable for the cost associated with this period pursuant to Government Code section 20283. However, service from July 1, 2007 to June 30, 2010 may be requested for purchase as Service Prior to Membership (SPM) credit at Mr. Bennett's expense, pursuant to the Government Code section 21020.

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." CalPERS looked to the California common law employment test to determine whether his status at the District was as an employee or independent contractor.

The common law employment test is used by the courts and the CalPERS Board of Administration to determine "employee" or "independent contractor" status under the Public Employees' Retirement Law (PERL)¹. In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the desired result.

¹ See *Metropolitan Water Dist. v. Superior Court (Cargill)* (2004) 32 Cal.4th 491 which held the terms "independent contractor" and "employee" of a contracting agency must be defined with reference to California common law.

If an employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists. Other factors to be taken into consideration are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the parties believe they are creating the relationship of employer-employee².

Government Code section 20028(b) states that an employee for retirement purposes is "Any person in the employ of any contracting agency."

Government Code section 20305 requires employers to enroll a qualified employee based on certain employment conditions. This section includes an employee whose appointment or employment contract fixes a term of full-time, continuous employment in excess of six months.

The determination that Mr. Bennett provided services as a common law employee of the District is based on the following documents or factors:

- An award notice for unemployment insurance benefits from the Employment Development Department (EDD) to Mr. Bennett, dated November 5, 2012, identifying Mr. Bennett as the employee and the District as the employer.
- A notice from EDD, received by the District on November 7, 2012, announcing Mr. Bennett received unemployment benefits based "in total or in part on wages reported" by the District.³
- Service agreements from 2010 to 2012, "Scope of Work" sections require the same types of duties held by the District's System Administrator as presented on the duty statement, a position already established within this agency and listed in the District's salary schedule as a non-exempt position.
- Copies of emails submitted for review, dated from 2007 to 2012, indicate the District controlled, assigned, directed, instructed, and reviewed the IT services Mr. Bennett provided to the District.⁴

² The factors to consider are enunciated in *Tieberg v. Unemployment Ins. Bd.* (1970) 2 Cal.3d 943, 949 and *Empire Star Mines v. California Employment Com.* (1946) 28 Cal.2d 33, 43-44. See also CalPERS Precedential Decisions *In the Matter of the Statement of Issues of Lee Neidangard, Respondent and Tri-Counties Regional Center, Respondent*, Precedential Case No. 05-01 (2005) and *In the Matter of the Application to Contract with CalPERS by Galt Services Authority, Respondent, and City of Galt, Respondent*, Precedential Case No. 08-01 (2008).

³ Both notices indicate Mr. Bennett was an employee of the District at least back to September of 2011.

⁴ The emails were mostly between District staff, (Jason Martin, District IT Manager, and Dale Badore, District's Data Operations Supervisor, per the District's Organization Chart). There were hundreds of emails reviewed supporting the conclusion that Mr. Bennett performed the IT services as a common law employee.

- The information presented indicates the District had first call on the services performed, as the information indicates the District approved and dictated work hours.⁵
- The District provided Mr. Bennett with an email address: shawn@ranchowater.com.⁶
- Employee recognition certificate awarded in November of 2009 to Mr. Bennett from the District.⁷
- Mr. Bennett's photo is included in the District's Human Resource employee photo Database.⁸
- Mr. Bennett attended staff training directed by the District.⁹
- District provided badge access to Mr. Bennett.
- The information presented indicates the District assigned & provided a cell and desk phone to Mr. Bennett and other office supplies and letterhead.¹⁰
- Based on a review of the services agreements from 2010 to 2012, either party could terminate the relationship at any time within notice.
- The Employment Relationship Questionnaire responses completed by Mr. Bennett are supported by the service agreements "Scope of Services" section, emails correspondences between the District and Mr. Bennett and other documents addressed above.¹¹
- Mr. Bennett's yearly earnings for the services he provided at least based on the information in the presented are within salary range of the System Administrator position.¹²
- Information presented indicates Mr. Bennett was compensated on an hourly basis.¹³

The following factors were reviewed, but deemed non-determinative:

- Mr. Bennett initially was assigned by another entity to perform services at the District; however, the totality of the information presented supports the District controlled the services Mr. Bennett provided to the District.¹⁴
- There were service agreements in place regarding the services performed and Mr. Bennett was identified as either consultant or referred to as Strange PC¹⁵ throughout the agreements; however, the totality of the information presented

⁵ For example, email dated March 7th, 2010, from Dale Badore to Mr. Bennett and other staff, dictating the work-hours of staff.

⁶ Based on the various email reviewed, dated from 2007 to 2012

⁷ The District's recognition award was approved & signed by a Matt Stone, the District's General Manger (per the District Organization Chart).

⁸ Information presented indicates the photo was taken and included by the District as early as March 21, 2007

⁹ Emails from 2010 to 2012 indicate Mr. Bennett was provided training by the District.

¹⁰ Documents presented list Mr. Bennett among other District staff, indicating the District's treatment of Mr. Bennett akin to regular District staff employees. Mr. Bennett also used the District's Letterhead, dated June 20, 2012, in the course of carrying-out the services provided.

¹¹ The Employment Relationship Questionnaire responses completed by the District's is in conflict with the overwhelming supporting documents that conclude Mr. Bennett provided IT services as a common law employee for the District

¹² This is based on the District's salary schedule.

¹³ Employment Relationship Questionnaire & vendor payroll records

¹⁴ Umetch was the entity cited by the District and Mr. Bennett, but, at least from 2007, their role appears to be limited to a third-party employer akin to a Temp agency.

¹⁵ Name of Mr. Bennett's own business

supports the District controlled the services Mr. Bennett provided to the District, thus, establishing an employee/employer relationship between the two parties.

- Mr. Bennett owns a business and advertised his services via the internet. Mr. Bennett indicated he occasionally performed IT related work out-side of the services he provided to the District; however, the totality of the information presented supports the District controlled the services Mr. Bennett provided to the District despite admission of providing similar services.
- Many of the Employment Relationship Questionnaire responses provided by the District are in conflict with Mr. Bennett responses; however, Mr. Bennett's common law employee status under the District is supported by the service agreements "Scope of Services" section, emails correspondences between the District and Mr. Bennett, and other documents addressed above that CalPERS has concluded as the District exercising control over the services Mr. Bennett provided to the District¹⁶.

As indicated above, the membership period to be included in this System is from July 1, 2010 to August 28, 2012. This is based on the payment information, emails between the two parties, and service agreements that supported full-time employment was expected to be maintained for at least a year or more. Under these employment conditions, Mr. Bennett qualifies to be reported to CalPERS retroactive to July 1, 2010.

The period to be included in membership will obligate the employer to cover the cost associated with this period. This is based on Government Code section 20283, which requires the employer who fails to report an employee within 90 days of qualifying for membership. Circular letters and the Public Agency reference manuals stipulate that "the PERL requires contracting public agencies to enroll in CalPERS all common law employees."

There was insufficient documents to support Mr. Bennett provided services under a time-base and appointment tenure other than indeterminate prior to July 1, 2010, which he may request as SPM credit. If Mr. Bennett elects to purchase this credit, it would be at Mr. Bennett's expense. Because this purchase is optional for members of this System, the District is not obligated to contribute any amount toward this type of service credit purchase.

Based on the above determinations, the District must enroll Mr. Bennett in Membership from July 1, 2010 to August 28, 2012. The District will be required to complete the enrollment process via the myCalPERS system. Under G.C. section 20283, the District will be invoiced for the Arrears period from July 1, 2010 to August 28, 2012 according to CalPERS' policies and procedures.

¹⁶ The Employment Relationship Questionnaire response completed by the District's is in conflict with the overwhelming supporting documents that conclude Mr. Bennett provided IT services as a common law employee for the District.

Eileen Dienzo
February 11, 2013
Page 5

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within thirty days of the date of the mailing of this letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations.

An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties. If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

Your appeal should be mailed to the following address:

**Karen DeFrank, Division Chief
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709**

CalPERS is committed to assisting our members and business partners in all matters within the scope of the statutory authority that is available to us. If you have any questions regarding our review, please contact me at 916-795-7631.

Sincerely,


**Emily Perez de Flores, Manager
Membership Reporting Section
Customer Account Services Division**

Enclosure

cc: Shawn Bennett



California Public Employees' Retirement System
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
888 CalPERS (or 888-225-7377) FAX (916) 795-4166
www.calpers.ca.gov

July 6, 2012

Ms. Roberta Almeida



Dear Ms. Almeida,

This letter is regarding your request for the California Public Employees' Retirement System (CalPERS) to review your membership eligibility while performing services for CalPERS between July 1, 1998, and June 29, 2009. These services were performed under the company names of Synergy Consulting and Roberta Almeida.

CalPERS has reviewed the information provided through the Law Office of James McGlamery as well as other relevant documentation and has concluded that you were performing services as an Independent Contractor between July 1, 1998, and June 29, 2009, and not as an employee of CalPERS.

Formal Determination

1. CalPERS Has Determined You Were An Independent Contractor And Not An Employee of CalPERS.

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."¹ Section 20028 defines who may be an employee for purposes of membership in the retirement system. Section 20028(a) states that an employee is, "Any person in the employ of the state . . .". CalPERS applies the California common law employment test to determine whether the services you provided from July 1, 1998, through June 29, 2009, was as an employee or independent contractor.

The common law employment test is used by the courts and the CalPERS Board of Administration to determine "employee" or "independent contractor" status under the Public Employees' Retirement Law (PERL).² In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the desired result. The substantial documentation provided, failed to demonstrate that CalPERS exercised the level of control necessary to create an employee-employer relationship, the highlights of which will be described more thoroughly below.

¹ All further references are to the Government Code unless specified otherwise.

² See *Metropolitan Water Dist. v. Superior Court (Cargill)* (2004) 32 Cal. 4th 491, which held the terms "independent contractor" and "employee" of a contracting agency must be defined with reference to California common law.

If an employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employee-employer relationship exists. Other factors to be taken into consideration are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the parties believe they are creating the relationship of employee-employer³.

The basis for our conclusion that you were an Independent Contractor from July 1, 1998, until your date of hire with CalPERS of June 30, 2009, includes, but is not limited to, the following information:

Synergy Consulting

- From July, 1998, through April, 2000, you, nor your company, "Roberta Almeida" had a consulting agreement with CalPERS. You had an independent contractor agreement with Synergy Consulting (Synergy). You were identified as Synergy's subcontractor in two different contractual periods awarded to Synergy by CalPERS.
- Both these contractual periods were awarded to Synergy via a lengthy and complex system of evaluation, qualification, and competition, in order to qualify and receive a California Multiple Award Schedule (CMAS) in conjunction with the Department of General Services (DGS). In turn, Synergy then presented this award, fulfilled additional requirements, and signed Terms and Conditions (T&C's) in order to participate in the CalPERS Vendor Pool. Synergy was then invited to compete on the specific scope of work related to these projects. Synergy, as an organization, was awarded the contract for the services rendered between July, 1998 and April, 2000.
- As a subcontractor of Synergy, you were directed by Synergy to perform services on behalf of Synergy for the CalPERS' Corporate Database Project and the Year 2000 Support for the period of July, 1998 through June, 1999.
- From February, 2000, through April, 2000, you continued as Synergy's subcontractor in the Benefit Equity and Legacy Support projects.

³ The factors to consider are enunciated in *Tieberg v. Unemployment Ins. Bd.* (1970) 2 Cal.3d 943, 949 and *Empire Star Mines v. California Employment Com.* (1946) 28 Cal.2d 33, 43-44. See also CalPERS Precedential Decisions *In the Matter of the Statement of Issues of Lee Neidengard, Respondent and Tri-Counties Regional Center, Respondent*, Precedential Case No. 05-01(2005) and *In the Matter of the Application to Contract with CalPERS by Galt Services Authority, Respondent, and City of Galt, Respondent*, Precedential Case No. 08-01 (2008).

- As Synergy's subcontractor, you agreed to provide "expert" consulting services to CalPERS on Synergy's behalf. Synergy controlled the terms of your compensation and level of services provided. You directly corresponded with Synergy concerning your time, your pay, and progress while working on these database projects. As per your contractual agreement with Synergy, you were required to indemnify Synergy, incur employment taxes, and provide liability insurance.
- State civil service employees do not have individual employment agreements with parameters governing such terms and conditions as you maintained with Synergy. All agreements and contracts relating to the time period of July, 1998, through April, 2000, identified Synergy as the contracting agency of CalPERS. These service agreements provide specific project goals and contain no clauses or progression towards state employment for the "experts" provided by and in contract with Synergy.

Roberta Almeida, the company

- Beginning January, 2001, your company began contracting with CalPERS on an individual Statement of Work (SOW) basis, no longer as a subcontractor of Synergy, but as your own consulting agency, under the company name Roberta Almeida. Like Synergy, you competed with other agencies and contractors via a lengthy and complex system of evaluation, qualification, and competition, in order to qualify and receive a CMAS in conjunction with DGS. Your company was awarded a contract number, term date range, distribution area, and schedule of qualified services providing information technology (IT) consulting services only. Your company was then required to submit additional documentation validating your company's qualifications as well as to review and sign T&C's before you could participate for the CalPERS Vendor Pool. Once placed in the Vendor Pool, your company remained among highly competitive companies and contractors waiting to receive a Request For Offer (RFO). Based on your specific knowledge and expertise, your company was among the few who were allowed to receive and bid on the RFO distributed in late 2000.
- In reviewing your bid with all the other RFO responses, CalPERS then evaluated both your organization and the resource you provided against the other companies and consultants – your knowledge and experience with various operating systems, design methodology and project management. In addition, you, under the title of contractor and owner, were scored and ranked on your references provided indicating customer satisfaction, your ability to work with end-users, IT staff and the cost/rate proposed to provide such services.
- It was not until you were successful in all the previous levels of competitive evaluations were you able to validate a contract with CalPERS by signing the SOW agreement under the title of consultant, contractor, and owner. Through each step of this contractual period, you met each parameter and each step of the process as an independent contractor.

- Once you secured the initial contract period of January, 2001 through December, 2001 on behalf of Roberta Almeida, you maintained the contractor status in the Vendor Pool. As a consultant, your company received upcoming RFOs and continued to score successfully in the maintenance programming services. Your consulting firm and inherent resources were chosen over the other competing contractors and independent companies to provide technical analysis and programming services to CalPERS, particularly in the support of legacy update and subsequent application technology.
- In 2006, CalPERS established a new Spring Fed Pool. The Spring Fed Pool was formed specifically to target contracting companies and contractors in the IT field. Your company submitted a response to a Request for Proposal (RFP), which was required to participate in the newly established Spring Fed Pool.
- Like the complex evaluation your company had to set forth for CMAS, your company was again evaluated on multiple levels, but primarily based on your developed expertise in the specific area of IT as outlined in the RFP. Your company was selected based on the combination of client evaluation, forms provided, and the maximum consultant rate proposed in comparison to others evaluated. In turn, your company was awarded the RFP contract as were numerous other IT companies and consultants. As the SOWs were released, you were allowed to bid, and again were reviewed and evaluated using a various range of qualifiers. Once awarded, and upon the signing of each SOW, you confirmed your status as that of an independent contractor, a contender in the process of securing contracting work with CalPERS.
- CalPERS had continual short term projects that were set aside from the ongoing work of the IT Department, work requiring specific skill sets that would not be needed in the future. It was CalPERS' intention to contract for the necessary technological experts through the CalPERS Vendor Pool.
- Later, when CalPERS had been in pursuit to replace its legacy system, CalPERS established a new Spring Fed Pool. CalPERS used the Spring Fed Pool to secure essential information technology experts per contract requirement and agreement. The purpose of using independent contractors was to provide a superior level of technological analysis, program design, testing, maintenance, and trouble-shooting, independent of the general programming level and commitment of formal state civil service employees.
- For each phase of the legacy enhancement and progression, a SOW was released. You were free to choose whether or not to respond. As with each SOW bid reply, you maintained yourself and your company as a contender, confirming your status of independent contractor and re-establishing your relationship with CalPERS as that of an independent contractor/employer.
- In addition to the lengthy application process required for the CMAS and later for the RFP, it is also apparent that you were aware of the necessary process required for state civil service employment - the state civil service hiring process of submitting an

application for an examination, competing in the examination, becoming reachable on a list, locating a vacant position, applying for a position, and participating in a hiring interview. You submitted 11 applications to CalPERS from August, 2008, until January, 2009. You also applied a 12th time on July 7, 2009, after you started working at your current position at CalPERS for which you were hired on June 30, 2009. You were aware of the distinctively different processes to be selected as a successful bidder from a pool and qualifying and being selected for a state civil service position.

- Considering the lengthy process you endured in your application bid into the Vendor Pool and Spring Fed Pool, you expressed yourself as an independent contractor and set the status that you willingly did not believe you were creating an employer-employee relationship with CalPERS. With your knowledge and consent, CalPERS did not provide insurance coverage or benefits (i.e. vacation, sick leave) as part of the arrangement, and no payroll taxes were deducted from the payments made to you.
- CalPERS also had no intention to create an employee-employer relationship out of the Vendor Pool or Spring Fed Pool. CalPERS retained you as a consultant due to your expertise and superior level of knowledge for specific projects in the information technology field. Such a position would be performed by a specialist without supervision, training, control, or direction.
- CalPERS did not control the manner and means of how you accomplished the projects, but rather reviewed your work product only to the extent of completeness, cohesiveness, and ability to integrate with other systems. Due to the nature of the project, there existed a need for a check and balance with every phase and entity involved with the continual legacy operations and peripheral systems. Any coordination with CalPERS' supervisors, managers, other contractors, and staff was essential in the process and development of the multiple stages of each contracted phase of development. It was imperative that CalPERS maintain control for the result, not the manner and means of how the program code was to be developed. With systems available only at specific times, and at the CalPERS location, you were expected to retrieve information from staff and introduce system upgrades and implementations accordingly.
- The method in which you were paid indicates you were an independent contractor, specifically as you billed for "consulting services". Your company was compensated for your services at a premium dollar amount, a rate based on the RFO or SOW response and often further negotiated. The consultant rate you received was 3 – 4 times the amount that would have been paid to an information technology state civil service employee whose rate of pay is set by a publicly available pay schedule pursuant to Section 20636(b)(d)⁴. Having the ability to control and set one's own rate of pay,

⁴ All payrates or base pay reported must comply with Section 20636(b)(1) which provides in relevant part as follows: "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. 'Payrate', for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e)." (Emphasis added) Additionally, Section 20636(d) provided, "[N]otwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny." A "payrate" must also be listed in a publicly available pay schedule which meets all criteria listed in California Code of Regulations (CCR) Section 570.5. -19-

particularly at a rate significantly higher than a state civil service information technology employee, is a clear indication of your independent contractor status.

- The vendor payments made to your company as payment for work you performed demonstrate that the hours you worked varied over time and that you submitted invoices to CalPERS for payment. You also dictated your schedule, allowing yourself personal and professional absences, as opposed to the "request for time off" process state civil service employees must adhere to in accordance to the approval/permission state civil service procedure. Full-time employees have a consistent time base of which they can accumulate credits towards personal time off. They also receive consistent paychecks, unlike the vast and varying amounts as you received ranging from \$150.00 on 1/11/2007 to \$14,650.00 received on 11/8/2005. As a consultant, your time varied and so did your hourly rate.
- The state did not approve or reject merit salary adjustments, initiate disciplinary or grant, deny, or review any personnel actions upon you while you were performing services between July 1, 1998 and June 29, 2009.
- You skillfully scheduled time for your professional services outside of CalPERS and your personal time preferences outside of critical programming needs. Based on the terms and conditions set forth in the SOW, CalPERS had the right to request a satisfactory replacement for those self-scheduled leaves from work. However, CalPERS chose not to exercise its right based on the non-criticality of the workload.

Conclusion

Based on all the information available CalPERS concludes that you were performing services as an Independent Contractor between July 1, 1998 and June 29, 2009, and not an employee of CalPERS. Section 20300 provides exclusions to compulsory membership. Section 20300(b) specifically excludes from membership in CalPERS "(b) independent contractors who are not employees." It is our determination, therefore, that your services from 1998 to 2009 as a consultant, provided through Synergy and then through your company Roberta Almeida is excluded from membership by Government Code section 20300(b).

This letter highlights some of the major concerns identified by CalPERS in its determination. However, the issues identified in this letter are not exhaustive nor are they intended to reflect all of the legal, technical and administrative issues we considered in reaching our determination. CalPERS reserves the right to raise additional issues related to the determination listed above. If additional issues are raised, you will be notified and granted additional appeals rights as to any new findings.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations.

Roberta Almeida
July 6, 2012
Page 7

An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties. If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you chose to use the Law Office of James McGlamery, or hire another attorney, please let CalPERS know immediately so our attorney can work directly with that office.

Attached is an informational brochure on the General Procedures for Administrative Hearings.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

Your appeal should be mailed to the following address:

Karen DeFrank, Chief
Customer Account Services Division
P.O. Box 942704
Sacramento, CA 94229-2704

Should you have any further questions or concerns regarding this matter, please contact Christina Rollins, Manager of the Membership Analysis and Design Unit directly at 

Sincerely,


EMILY PEREZ de FLORES, Manager
Membership Reporting Section
Customer Account Services Division

cc: Law Office of James McGlamery
ANNE STAUSBOLL

Exhibit G



CalPERS Audits & Related Issues – How City Attorneys Can Prepare, Survive And Litigate

Friday, October 2, 2015 General Session; 10:30 – 11:45 a.m.

Steven M. Berliner, Liebert Cassidy Whitmore

DISCLAIMER: These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.

Copyright © 2015, League of California Cities® All rights reserved.

This paper, or parts thereof, may not be reproduced in any form without express written permission from the League of California Cities®. For further information, contact the League of California Cities® at 1400 K Street, 4th Floor, Sacramento, CA 95814. Telephone: (916) 658-8200.

CALPERS Audits

How City Attorneys Can Prepare, Survive and Litigate

By Steven M. Berliner, Partner, Liebert Cassidy Whitmore

I. INTRODUCTION

A. What Is A CalPERS Audit?

The California Public Employees' Retirement System ("CalPERS") maintains a department that audits the practices of its contracting agencies. It is similar to a financial audit of an agency's financial statements by Certified Public Accountants. CalPERS' audit staff will arrange a time to come to the City, where they will review Memoranda of Understanding ("MOUs"), Personnel Rules, City Resolutions, payroll records, municipal codes and other documents related to the City's compliance with the Public Employees' Retirement Law, Government Code section 20000, *et seq.* (the "PERL") and CalPERS' regulations (2 California Code of Regulations, section 550, *et seq.*)

Both prior to and after CalPERS' auditors do their onsite review, the City may be requested to produce additional documents or to answer specific questions that were not inquired about during the physical audit, but which became relevant. Sometimes, the process could take months, especially if issues to be addressed are complex or unusual.

The CalPERS Board has a duty to ensure that the CalPERS system is run efficiently and that contracting agencies are complying with the PERL and associated regulations. To that end, it is statutorily authorized to perform audits.¹

B. What Are Your Agency's Chances Of Being Audited?

Eventually, all contracting agencies will be audited by CalPERS. Some have been audited more than once while others may have avoided an audit entirely. Despite the persistent rumor that CalPERS no longer conducts audits, CalPERS does indeed continue to conduct audits and publishes the final reports on its website.

An agency's chances of being audited at any one time are rather low, as the majority of audits are randomly drawn. However, there are certain events that might

¹ Government Code section 20222.5 provides that a contracting agency has a duty to provide information and make records available during the course of an audit.

increase an agency's chances of being audited. Publicity surrounding an agency's practices related to a particular CalPERS benefit could increase the likelihood of an audit. Also, ongoing issues with determining retirement benefits for an agency's retirees could prompt further inquiry by CalPERS into that agency's practices.

II. THE AUDIT PROCESS

A. The Audit Itself

As described in the prior sections, the Audit Department will notify the City that it has been chosen for an audit. A date(s) will be set for the auditors to be onsite at the City to review MOUs, payroll records, etc. In preparation for the onsite audit, the auditors may request certain documents or information in advance and they may ask for additional documentation or information after the auditors have left the City. The auditors might have questions for City staff while they are there. It would be appropriate to confirm with the auditors who they anticipate they might need to talk to while they are onsite so that those individuals are available when needed.

Once the auditors are through with their review at the City and after they have gathered any additional information and/or documents they might need, they will finish their analysis. It is not common for a City to not hear from the auditors again for months or longer.

B. The Findings (Draft and Final Audit Reports)

The audit staff will review the information they have gathered from the City and issue a draft report. The draft report will contain a brief overview of the City, the time period the audit took place and proposed findings related to the practices or procedures they conclude are not in compliance with the PERL or CalPERS' regulations. It will also include recommended corrective action. CalPERS will generally provide a very short period of time for the City to provide a response to the findings and recommendations in the draft report. Usually, an extension of the response deadline can be obtained.

1. Response To The Draft Audit

It is almost always in the City's best interest to file a response to the draft report. First, the arguments made in the City's response to the draft report may result in the auditors modifying or reversing a finding. Second, even if the auditors maintain their findings and recommendations unchanged, the City's response will be attached as an exhibit to the final audit report, described below. Since the final report is a public

document, the City will likely benefit from having its version of the facts included as a counter to CalPERS' findings and recommendations.

The City will likely find that it agrees with the majority of the findings in the draft report and it should so indicate in its response along with a statement it will work with CalPERS' staff. There is no benefit to objecting to meritorious findings, as it dilutes the impact of the arguments made in opposition to the findings that the City truly opposes. The City's response should set out the CalPERS finding, the CalPERS recommendation and then the City's response. Both the factual and legal arguments should be presented.

2. Final Audit Report

The time frame between the draft audit report and the final report is usually much shorter than the time between completion of the audit and issuance of the draft report. You can expect the final report to arrive anywhere from one to two months after the City submits its response to the draft report. Usually the final report is identical to the draft but with the City response attached. Sometimes, the final version is different, as the auditors may have modified the draft based on legal arguments and evidence presented in the City's opposition to the draft report. CalPERS will generally send a letter to the City, either along with or shortly after serving the final audit report on the City, providing a list of CalPERS staff members in charge of addressing the issues raised in the audit, plus their contact information. A deadline to correct the issues raised in the audit is usually set and the City is requested to work through the issues with the designated staff members.

There is no hearing opportunity if the City objects to the final report. Rather, as described below, the City will have an opportunity to appeal specific findings as they are implemented by CalPERS' non-audit staff.

The City must work with CalPERS staff to correct the findings. If the City intends to appeal the findings, these discussions might not last long. However, as described below, the City will either need to comply or appeal, or both.

III. WHAT IS CALPERS LOOKING FOR?

A. Summary

CalPERS tends to focus on specific issues within the following broad areas:

1. Compensation Issues; and

2. Membership Issues.

All of the various issues that can arise in these broad topics cannot be described in this paper. However, this will give a summary of the major concerns.

B. Compensation Issues

Compensation earnable is one of the key factors (along with formula, years of service and age at retirement) in determining a retiree's benefits. It is made up of two components:

1. Payrate; and
2. Special Compensation.²

CalPERS auditors will review the City's documentation to confirm that the City is properly reporting the compensation earnable of its employees and that it is neither under-reporting nor over-reporting it.

1. Payrate

Payrate is normal monthly base pay as set forth in a publicly available salary schedule.³ CalPERS will look at the agency's salary schedules to determine if it complies with the requirements set forth in its regulations, including that the public has access to it (e.g., it is posted on the City's website) and accurately sets forth the salary steps or ranges, as well as the time base (e.g., hourly, weekly, etc.)⁴ If a classification is not listed on a salary schedule or the salary paid is not reflected on the schedule, CalPERS can determine the appropriate payrate.⁵

Salary schedules should be updated whenever salaries increase for a group such as annual Cost of Living Increases agreed to in an MOU. Also, all classifications must be listed, including those employees who have entered individual employment agreements.

² Government Code section 20636(a).

³ Government Code section 20636(b)(1).

⁴ 2 CCR section 570.5.

⁵ 2 CCR section 570.5(b).

Another common payrate issue arises when an employee not in a “group or class”,⁶ negotiates higher salary increases than other City employees in the final years of employment. In those situations, CalPERS will ignore those increases in retirement benefit calculations and look to the increases received by employees in the closest group or class.⁷

2. Special Compensation

Special compensation is defined in the Government Code as certain payments in addition to payrate received for “special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.”⁸ As important as or even more important than the Government Code definition is the CalPERS regulation setting forth the exhaustive list of pay types which are special compensation⁹ and specific requirements that each one of the pay items must meet to qualify.¹⁰ If a form of pay is not listed in the regulation, or the way it is earned, calculated, or paid by the City does not meet the strict requirements of the regulation, it is not special compensation. While nothing in the PERL prohibits a City from making the payments to the employees, it does limit what can be reported to CalPERS or used in calculating retirement benefits. Even if an item of pay fits within one of the categories of pay in the regulation to qualify as special compensation, that is only the first step. It must also meet additional criteria in the regulation (subpart (b)). For example, pays that are listed as special compensation (e.g., bilingual pay), may not be reportable if it is not paid to all members in the group or class,¹¹ or if it is not set forth in a labor policy or agreement.¹²

A labor policy or agreement refers to a document of broad application, such as an MOU or a resolution applying to groups of unrepresented employees. An individual employment contract is not a “labor policy or agreement.”¹³ Among other requirements, a labor policy or agreement must be publicly available (e.g., posted on the City website).¹⁴

Special compensation issues include:

⁶ Group or class is defined in Government Code section 20636(e)(1) to mean “a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class.”

⁷ Government Code section 20636(e)(2).

⁸ Government Code section 20636(c)(1).

⁹ 2 CCR section 571(a).

¹⁰ 2 CCR section 571(b).

¹¹ 2 CCR section 571(b)(2).

¹² 2 CCR section 571(b)(1).

¹³ *Prentice v. Board of Administration* (2007) 157 Cal. App. 3d 983.

¹⁴ 2 CCR section 571(b)(1)(c).

1. Failure to report;
2. Reporting non-complying pay items;
3. Over-reporting or under-reporting otherwise acceptable pay items.

Non-complying items are those that do not fit exactly within a definition set forth in 2 CCR 571(a), such as bonuses that are discretionary (the regulation requires more specificity in identifying goals and objectives), or including requirements/limitations on a specialty pay not included in the definition in the regulation.

Cities also need to be aware that New Members as defined in the California Public Employees' Pension Reform Act ("PEPRA")¹⁵ have some limitations on special compensation. For example, bonuses that would be reportable for Classic Members, are not reportable for New Members under any circumstances.

C. Membership Issues

1. The Common Law Employee Test Applies for Determining Eligibility for CalPERS Membership

Membership issues have been a hot topic for CalPERS for years. In the *Cargill* case¹⁶ the California Supreme Court held that the common law definition of employee applies for CalPERS membership purposes. The common law definition relies on a series of factors, and is therefore a factual test to be done on a case by case basis. The most important factor is whether the City has control of the manner and means by which the work is performed. If so, that suggests an employer/employee relationship. There are several other secondary factors. However, merely labelling someone who meets the common law employee factors a "consultant" or "independent contractor" or entering into an employment agreement are not likely, in and of themselves, to be sufficient to avoid the employee designation.

The distinction between "employee" and "independent contractor" is significant because employees must be enrolled as members in CalPERS (assuming the other criteria are met, such as hours thresholds) while independent contractors may not be enrolled. In fact, the *Cargill* case involved temporary agency employees performing services for MWD who claimed they were also MWD employees and entitled to CalPERS

¹⁵ Government Code section 7522, *et seq.*; see specifically section 7522.04(e).

¹⁶ *Metropolitan Water District v. Superior Court (Cargill)* (2004) 32 Cal. 4th 491.

membership like MWD's regular employees. The California Supreme Court ruled in favor of the workers by applying the common law factors in the CalPERS context.

2. Not All Employees Are Eligible for Membership

Even if a worker satisfies the common law test and is indeed an employee, that does not guarantee membership in CalPERS. It does in the typical case of an employee hired to a full-time permanent position. That employee would be eligible from the first day of employment. Government Code section 20305 spells out the rules in the less common scenarios of part-time, seasonal, intermittent, etc., employees.

Important rules of thumb to remember are:

1. The general rule is "once in CalPERS, always in CalPERS." This refers to the fact that if a CalPERS member changes employers and works for a new CalPERS contracting agency, the employee remains a CalPERS member even if the position at the new employer is a less than half-time position that otherwise does not qualify for membership.¹⁷

2. The default threshold is 1,000 hours worked in a fiscal year (July 1 – June 30).¹⁸ If a part-time or other employee works 1,000 or more hours in a fiscal year, the employee is eligible for membership prospectively. Another important point is that the "once in CalPERS, always in CalPERS" rule also attaches. Even if the employee never exceeds 1,000 hours in a fiscal year again, the employee remains a CalPERS member.

If an employee was eligible for CalPERS membership and not enrolled, there is no statute of limitations and he or she can be retroactively enrolled effective to years or decades earlier.¹⁹ CalPERS can assess a \$500 late fee per employee on the City.²⁰ Moreover, employer and employee arrears may be assessed against the City.²¹

IV. APPEALING THE FINDINGS

A. What Due Process Is Due

¹⁷ Government Code section 20305(a)(1).

¹⁸ Government Code section 20305 lists several different thresholds for eligibility.

¹⁹ Government Code section 20164(b)(2).

²⁰ Government Code section 20283(a).

²¹ *Id.*

A City has the right to appeal any adverse determination by CalPERS and have an evidentiary hearing on the determination. (2 California Code of Regulations, section 555.1).²²

The hearing is conducted under the Administrative Procedures Act (Government Code section 11500, *et seq.*, "APA"). This means that an Administrative Law Judge ("ALJ") from the State of California's Office of Administrative Hearings ("OAH") will preside over an evidentiary hearing. Limited written discovery is allowed. (Government Code section 11507.6). Also, the ALJ will only issue an advisory decision. The CalPERS Board of Administration has the final decision making authority on all appeals. Under the APA, the Board can adopt the ALJ's decision in its entirety, adopt it with minor technical corrections; reduce or mitigate the proposed penalty and adopt the balance of the proposed decision, reject it and refer the matter back to the same ALJ to take further evidence; or reject it and issue its own decision on the record. (Government Code section 11517).

CalPERS will make a staff recommendation to the Board and the City will have an opportunity to file a short written argument to the Board. The City will not be given an opportunity to make a presentation to the Board.

After the Board issues a final decision, the City will have the opportunity to challenge it in Superior Court via a writ of administrative mandamus under the Code of

²² Section 555 states,

"The Executive Director is hereby authorized to act: on any application for refund of contributions, crediting of service, correction of records, retirement for disability or service, and death benefits and allowances; and to fix and authorize the payment of any refund, allowance or benefit to which such applicant may be found to be entitled; to cause medical examination of retired persons; and to reinstate such persons from retirement upon his determination that disability does not exist. The Executive Officer may refer the question of an applicant's entitlement to any refund, allowance or benefit or of his reinstatement from retirement to a hearing officer for hearing.

The Executive Officer is hereby authorized and empowered to delegate to his subordinates authority to take any such action on his behalf."

Section 555.1 states,

"Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal."

Civil Procedure.²³ It can further appeal the Superior Court decision to the appellate courts.

Since CalPERS provides an administrative remedy, it must be exhausted before a City or any affected party can seek redress in the courts. Absent exhaustion, the courts will have no jurisdiction over the matter.

B. When to Appeal

1. When The Final Audit Report Is Issued

An appeal is due within thirty (30) days of notice of a determination, or extension, if granted.²⁴ The final audit report makes findings and recommendations but is not necessarily an appealable determination. It certainly does not set forth the City's appeal rights, nor is it self-executing. As mentioned, after the audit is concluded, the issues raised continue to be worked on between the City and other CalPERS staff members. It could be argued that the issuance of a final audit report does not start running the appeal deadline. Nonetheless, many agencies choose to file their appeal at this time. While it is arguably premature, as no determination has issued yet, CalPERS generally accepts and processes an appeal at this time.

If the City knows it will be appealing a specific finding, there is no reason to delay an appeal. The benefit to filing an appeal right away is two-fold. First, the City avoids the possibility that a subsequent determination will fall through the cracks and the appeal deadline missed. Second, it allows for the possibility of settlement discussions between the City and CalPERS' legal staff before any determinations are issued by CalPERS to retirees. In most cases though, the hearing process takes months to years to play out and the City might not know who in the CalPERS legal department is assigned to the appeal for months.

2. When A Determination Is Made

Sometimes, a City will wait for the discussions with CalPERS' non-legal department staff responsible for the follow up on the auditor's findings to proceed before deciding to appeal. As mentioned, that is allowable because the final audit report is not a determination in and of itself. It might be beneficial in some instances to pursue

²³ See Government Code section 11523.

²⁴ See 2 CCR section 555.1.

whatever resolution is possible with CalPERS' staff before resorting to an appeal. Whether to file an appeal after the final report is issued or wait is a strategic decision to be made on a case by case basis, but in general an immediate appeal of findings that the City is certain it will appeal usually is more advantageous.

C. What Does The Appeal Look Like?

The appeal is in a letter format, indicating it is an appeal and requesting an administrative hearing. Unlike the response to the draft audit report, the appeal only addresses those findings in dispute. It should set forth the factual and legal grounds as to why the City believes the auditor's findings are incorrect. A mere "the City appeals" document without more should be avoided. It could be rejected by CalPERS as not stating the basis for the appeal and is less likely to prompt settlement discussions than a fully articulated factual and legal basis for the appeal.

If the City filed a response to the draft audit report as recommended, the City will be a long way toward completing an appeal. Generally, the response will form the basis for the appeal. If a thorough legal and factual analysis was included in the City's response to the draft report, the appeal will mirror the response to the draft audit report on the contested issues.

CalPERS will subsequently acknowledge receipt of the appeal. Then, there will likely be a long gap in time before further action is taken to move it forward. It is not uncommon for appeals to be set for hearing months after or even one year or more later.

V. PREPARING FOR THE AUDIT

The best preparation for a CalPERS audit is to take a proactive approach to the City's documentation and practices to ensure they are in compliance with the PERL. One way to do that is to conduct an internal audit of the City for these issues before CalPERS contacts City staff to set up a CalPERS audit. If an internal audit uncovers issues, the City can correct them (through the meet and confer process if applicable) before CalPERS calls.

If the City is notified by CalPERS that the City will be subject to an audit, CalPERS will likely ask for documentation or information that it deems relevant. If not, you should work with the City staff to make sure that MOUs, salary schedules and relevant personnel rules are all readily available and easily accessible. Someone at the City should be the point of contact for the auditors (Human Resources or Finance Department Directors or staff will usually be fine). City employees need to be prepared

to work cooperatively with the auditors despite whatever disruption it causes to their regular routine. They should also be prepared that the process, which includes post audit corrections and possible appeals, could last months and/or years.

VI. CONCLUSION

This paper provides the basics about a CalPERS audit, what it is, what to expect, issues that are likely be scrutinized, appeal rights, etc. However, the actual legal issues that will arise in any given audit depend on numerous factors unique to a particular City. While the City will survive a CalPERS audit, the best approach is to be proactive and address problems before CalPERS notifies the City that it will be audited.

Exhibit H

RIBS Priority Service Requests (RPR) Project Assignment Notification

Service Request Number	
Date of Assignment	
Primary Analyst	
Supporting Analysts	
Designated Review Analyst	
Program Division and Contact	
Estimated hours for Completion	

Required Tasks:	
1.	Update the Access database with this SR information.
2.	Working with the Program Division Contact, prepare a Functional Requirements Definition (FRD) document for this Service Request and get it signed off by the Program Division contact. If the estimate for this SR is greater than 80 hours, the Designated Review Analyst must also sign off on the FRD. Give the original signed off copy to Pam Anderson.
3.	Re-estimate the Service Request. Provide the revised estimate to Pam Anderson via e-mail note. The estimate should include a breakdown by functional components. If there is a change in scope between the FRD requirements and those identified in the Service Request requiring a significant change in the number of hours estimated for completion, get approval from Pam Anderson before proceeding on this request.
4.	<p>Prepare the Technical Design Requirements (TDR) document and have it reviewed and approved by the Designated Review Analyst. Give the Designated Review Analyst lead-time notice about when to expect your TDR package for review. Your TDR package should include:</p> <ul style="list-style-type: none"> • The Technical Requirements Review Log cover sheet, • The FRD, • The TDR, • The SR and any addendum, and • Any other helpful documentation. <p>Give the Reviewer-signed copy of your TDR to Pam Anderson.</p>
5.	<p>Make sure your documentation is complete and in the proper folders.</p> <ul style="list-style-type: none"> • Remember to store the working copies of your FRD and TDR under the service request number at: F:\Data\Asg\Projects\Ribs Priority Requests FY 2002-2003. • If a folder does not already exist for this SR at the F drive location, you will need to create one. The folder should be created using the four numeric digits of the SR number only. • For your FRD/TDR document names, please follow the naming convention identified (these procedures have been copied to the TEMPLATES folder at the F drive location identified above).

6.	Build and Unit Test the required system modifications. <ul style="list-style-type: none"> • Use the appropriate forms to request DBA, Software Services, and Production Services assistance with sufficient lead-time for them to schedule your requests.
7.	Support Program Division staff as they conduct User and Acceptance Testing. Fix any problems identified. Problems are to be logged in the Project Problem Log located at: Q:\Data\CalPERS\RIBS Priority Requests FY 2002-2003\RPR SR Problem Log.
8.	Use the Implementation Checklist (still being developed) when implementing the modifications.
9.	Obtain the Program Division Signoff on the original Service Request and return it to Pam Anderson.
10.	Update the status to reflect completion on the Access Database.
11.	Report your hours spent on this SR accurately on your TeamPlay timesheet each week and submit your timesheet timely. Make sure your status report is submitted by close-of-business each Monday (or Tuesday if Monday is a holiday).
12.	Other:

Exhibit J

(some names redacted)

Procedure for Monitoring Help Desk Tickets

Owner: Tom ██████

Last Revised: 12/28/2007

The procedure for monitoring Help Desk tickets within the Legacy Applications Support Unit involves the following:

Roles

- Administrator
- Primary Monitor (2 at a time)
- Alternate Monitor (2 at a time)
- Fulfiller

Documents (all accessible via the Legacy web page)

- Procedures (this document)
- Coverage Calendar (shows Administrators, Primary Monitors, Alternate Monitors)
- Notification List, by system (shows Fulfillers)
- Monitor Schedule (shows which Monitor is on duty each hour of each workday)

Resources

- ITSB, Legacy HelpDesk mailbox
- ITSB, Legacy HelpDesk Support distribution list

Overview

Here is a concise overview of the process:

1. A Helpdesk ticket is generated and automatically sent to the Legacy mailbox (ITSB, Legacy HelpDesk mailbox).
2. The Distribution List (ITSB, Legacy HelpDesk Support distribution list) automatically forwards all mail sent to the Legacy mailbox to the personal mailboxes of the two Primary Monitors and two Alternate Monitors.
3. The Monitors coordinate together so that all know which one of them is responsible for handling the ticket. The responsible Monitor is expected to forward the ticket to the appropriate Fulfiller within 60 minutes from the time the ticket appears in their mailbox.
4. The responsible Monitor uses the Notification List (found on the Legacy web page) to determine which Legacy team member (Fulfiller) should work the Helpdesk ticket.
5. Once the responsible Monitor has determined that a Fulfiller is available (via face to face or phone contact), and has forwarded the Helpdesk ticket to the Fulfiller via email, the procedure described within this document is complete. Further work on the Helpdesk ticket is performed according to existing Problem Report procedures.

Details

Procedure for Monitoring Help Desk Tickets

Owner: Tom ██████████

Last Revised: 12/28/2007

Organizational Activities

The **Administrator** role (see the Coverage Calendar document on the Legacy web page for the Administrator currently filling this role) is responsible for the following organizational activities that ensure that this process works as intended:

1. Coverage Calendar document maintenance – the Coverage Calendar exists on the Legacy web page, and may be updated by any member of Legacy. Prior to their month of duty, Legacy members can negotiate with each other to switch Monitor duty months and update the calendar. They then need to notify the Administrator of the changes so that the Administrator can ensure that the new set of Monitors can provide coverage from 8 AM to 5 PM. The Administrator keeps a backup copy of this document as a history of changes, and in case of erroneous update.
2. Notification List document maintenance – also exists on the Legacy web page. The Senior responsible for each system is responsible for updating that system's list of Fulfillers. When a change is made, the Senior that updates this document notifies the Administrator. The Administrator notifies the Primary Monitors and Alternate Monitors that the Notification List has changed, and also makes a backup copy of the revised document.
3. Two or three working days before the start of a new month, the Administrator sends an email to the two Primary Monitors and two Alternate Monitors (for the new month, as shown in the Coverage Calendar) to remind them that their turn is about to begin, and to tell them to review this procedures document.
4. By 8 AM on the first working day of the month, the Administrator updates the Distribution List to remove the prior month's Primary Monitors/Alternate Monitors, and to add the new month's Primary Monitors/Alternate Monitors. The Administrator sends a test email to the Legacy mailbox, and confirms that all four of the new Distribution List additions received this email (to ensure that new Helpdesk tickets will arrive in all of the Monitors' mailboxes). **Note:** ██████████ ██████████ name is to remain in the Distribution List permanently.
5. The Administrator monitors that the Distribution List is operating properly. It is probably easiest to do this by adding themselves to the Distribution List so that Help Desk tickets also get forwarded to their personal mailbox. If no Help Desk tickets appear for a day, the Administrator can send a test email to the Legacy HelpDesk mailbox and confirm that this test email also appears in their personal mailbox.
6. The Administrator will keep a tally of each Help Desk ticket that comes to the Legacy HelpDesk mailbox, broken down by the Legacy system that was assigned to work each ticket. Management may request this tally on a weekly or monthly basis.
7. If one or both of the Primary Monitors are absent, the Administrator contacts the Alternate Monitors in person or via phone (not voice mail) to step into the Primary Monitor roles, and to ensure that the Alternates understand what is expected of them. If there are periods of time during the 8 AM to 5 PM workday when none of the Monitors are available, the Administrator must locate a substitute and add them to the Distribution List for the period of time that the substitute will serve as the Monitor.
8. If an Administrator has a planned absence during their coverage period, the Administrator must arrange for a backup Administrator and notify all Monitors.

Procedure for Monitoring Help Desk Tickets

Owner: Tom ██████

Last Revised: 12/28/2007

9. When the Senior who is currently serving as the Administrator or backup Administrator is unexpectedly absent, the other Seniors must be aware of the overall schedule and another Senior needs to temporarily fill this role.

The **Primary Monitor** role (see the Coverage Calendar document on the Legacy web page for the two Primary Monitors currently filling this role) is responsible for the following organizational activities that ensure that this process works as intended:

1. When informed by the Administrator that the Primary Monitors' turns are about to begin, the Primary Monitors read this Procedures document to refresh their memories. Complete this **before** the first work day of the month in which serving in the Primary Monitor role.
2. Before the first work day of the month, review the Coverage Calendar on the Legacy web page to obtain the other Primary Monitor and the Alternate Monitors. Consult with the other monitors to review schedules (such as work hours, lunch, and meetings) to determine who will be forwarding tickets to Fulfillers at each time of the day (from 8 AM to 5 PM) for each working day of the month. The intent is that the Primary Monitors handle the workload by themselves, if possible. The Alternate Monitors function generally as backups when one or both of the Primaries are absent. However, when high-priority meetings cause both Primaries to be unavailable at the same time, the Alternates can be called upon. **At all times that require monitoring, there should be only one Monitor in charge of forwarding Helpdesk tickets**, so that there is no confusion or duplication of effort. The Monitor Schedule (found on the Legacy web page) should be kept updated throughout the month to show which Monitor is on duty for each hour of each workday. If, based on all four Monitor's schedules there are periods of time when no one can provide coverage, contact the Administrator to resolve this.
3. On the morning of the first working day of the month, each Primary Monitor (and each Alternate Monitor) must confirm receipt of the test email message that the Administrator sent to the Legacy mailbox, forwarded automatically to each individual's mailbox based on the Distribution List changes made by the Administrator. If this has not happened, contact the Administrator. If the Administrator cannot be located, contact any other available Administrator.
4. If the Primary Monitor has a planned absence during their coverage period, the Primary Monitor must consult with the other monitors to arrange for a backup.
5. If the Primary Monitor is unexpectedly absent, the Primary Monitor must ensure that another monitor or the Administrator is informed.
6. If the Primary Monitor's service month is over, and Helpdesk tickets are still being received on the first workday of the next month, the Primary Monitor must continue fulfilling the role and contact an Administrator to correct the Distribution List to route the Helpdesk tickets to the correct monitors. As long as Helpdesk tickets arrive in the mailbox, the Primary Monitor routes them to the appropriate Fulfiller in order to ensure that none get escalated because they "fall through the cracks".

The **Alternate Monitor** role (see the Coverage Calendar document on the Legacy web page for the two Alternate Monitors currently filling this role) is responsible for the following organizational activities that ensure that this process works as intended:

1. When informed by the Administrator that the Alternate Monitors' turns are about to begin, the Alternate Monitors read this Procedures document to refresh their memories. Complete this **before** the first work day of the month in which serving in the Alternate Monitor role.

Procedure for Monitoring Help Desk Tickets

Owner: Tom ██████████

Last Revised: 12/28/2007

2. Before the first work day of the month, review the Coverage Calendar on the Legacy web page to obtain the Primary Monitors and the other Alternate Monitor. Consult with the other monitors to review schedules (such as work hours, lunch, and meetings) to determine who will be forwarding tickets to Fulfillers at each time of the day (from 8 AM to 5 PM) for each working day of the month. The intent is that the Primary Monitors handle the workload by themselves, if possible. The Alternates function generally as backups when one or both of the Primaries are absent. However, when high-priority meetings cause both Primaries to be unavailable at the same time, the Alternates can be called upon. **At all times that require monitoring, there should be only one Monitor in charge of forwarding Helpdesk tickets, so that there is no confusion or duplication of effort.** The Monitor Schedule (found on the Legacy web page) should be kept updated throughout the month to show which Monitor is on duty for each hour of each workday. If, based on all four Monitor's schedules there are periods of time when no one can provide coverage, contact the Administrator to resolve this.
3. On the morning of the first working day of the month, each Alternate Monitor (and each Primary Monitor) must confirm receipt of the test email message that the Administrator sent to the Legacy mailbox, forwarded automatically to each individual's mailbox based on the Distribution List changes made by the Administrator. If the Administrator cannot be located, contact any other available Administrator.
4. In general, the Alternate Monitor doesn't have any further tasks in this process until they are informed by a Primary Monitor or an Administrator that they need to take on Primary Monitor duties. The Alternate Monitor assumes the role of Primary Monitor until advised of relief from Primary Monitor duties by another Primary Monitor or an Administrator.
5. If an Alternate Monitor has a planned absence during their coverage period, the Alternate Monitor must consult with the other monitors to arrange for a backup.
6. If an Alternate Monitor is unexpectedly absent, the Alternate Monitor must ensure that another monitor or the Administrator is informed.

The **Fulfiller** role (see the Notification List on the Legacy web page for the Fulfillers currently filling these roles) is responsible for the following organizational activities that ensure that this process works as intended:

1. At all times, when a Fulfiller has a planned absence, the Fulfiller must consult with other Fulfillers to arrange for a backup. Before leaving on the planned absence, the Fulfiller must send an email to the entire Legacy team providing the name of their backup.
2. At all times, when a Fulfiller is unexpectedly absent, the Fulfiller must ensure that the person they speak with to report the absence will send an email to the group with the name of the Fulfiller's backup.

The Detailed Process

After all of the organizational work (described above) has been done, the actual process of monitoring and forwarding Helpdesk tickets is relatively simple. The goal is to have all tickets forwarded to a Fulfiller

Procedure for Monitoring Help Desk Tickets

Owner: Tom [REDACTED]

Last Revised: 12/28/2007

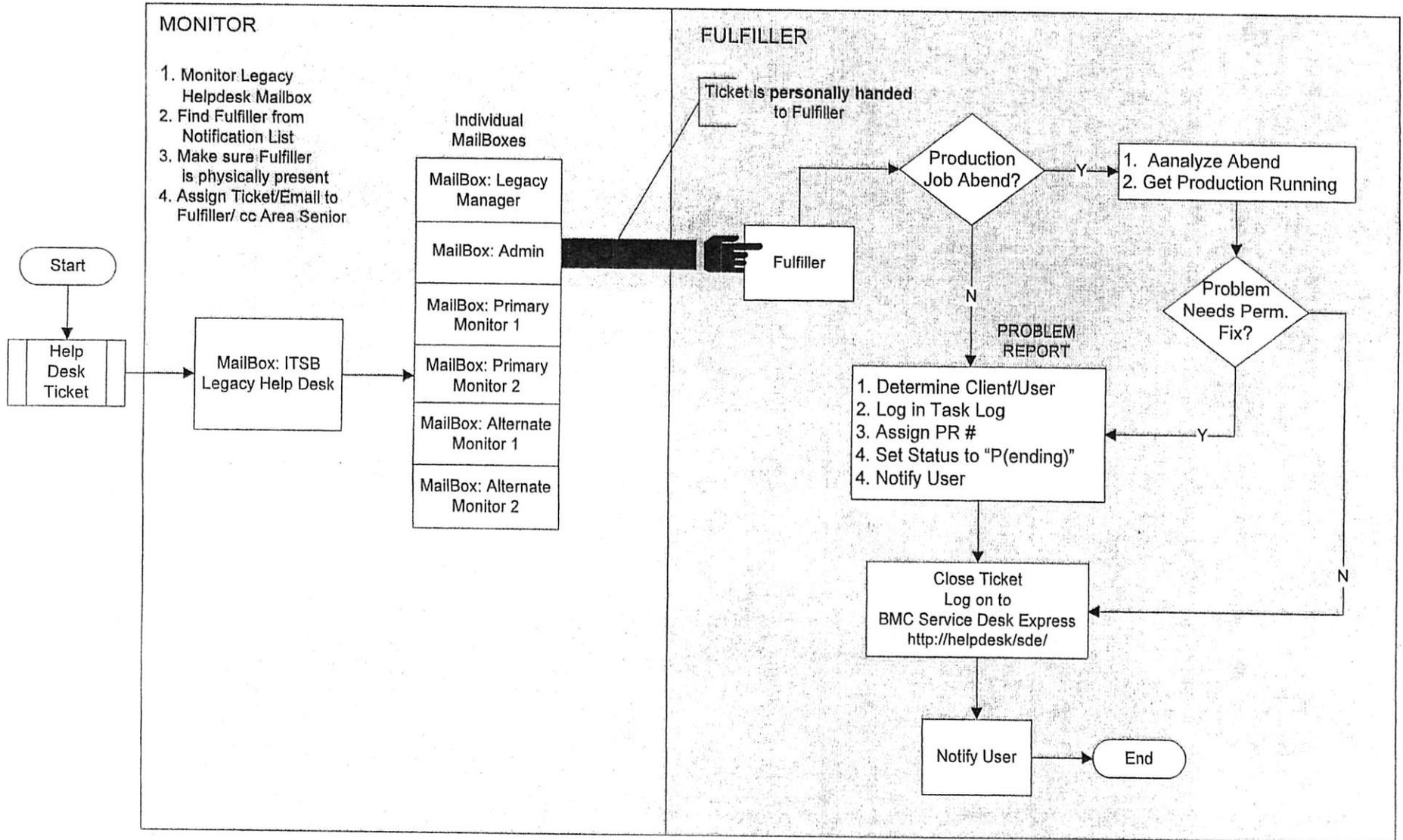
(who has been confirmed to be at work today) within 60 minutes of the time that they arrive in the Monitors' email inboxes.

Note: When follow-up Help Desk tickets are generated (for example, to report that 50% of the allotted time for resolution has passed), they are to be handled in the same way as other Help Desk tickets.

1. A Helpdesk ticket is generated and automatically sent to the Legacy mailbox (ITSB, Legacy Help Desk mailbox).
2. The Distribution List (ITSB, Legacy HelpDesk Support distribution list) automatically forwards all mail sent to the Legacy mailbox to the personal mailboxes of the two Primary Monitors and two Alternate Monitors.
3. The Monitors coordinate together so that all know which one of them is responsible for handling the ticket. (The Monitor Schedule (found on the Legacy web page) should be kept updated throughout the month to show which Monitor is on duty for each hour of each workday.) The responsible Monitor is expected to forward the ticket to the appropriate Fulfiller within 60 minutes from the time the ticket appears in their mailbox.
4. The responsible Monitor uses the Notification List (found on the Legacy web page) to determine which Legacy team member (Fulfiller) will work the Helpdesk ticket. The Notification List will have at least two Fulfillers for each system to which a Helpdesk ticket relates. The responsible Monitor contacts the first Fulfiller name for the impacted system personally (via face to face or phone contact) to confirm their presence in the office. If that Fulfiller is not available, proceed down the list for the system.
5. When the Fulfiller who will take responsibility for the ticket is confirmed, forward the ticket via email to them, and .cc the Senior for the impacted system (whose name can also be found on the Notification List), the Administrator (as shown on the Coverage Calendar), and the Manager [REDACTED]. Mark this email as High Importance.
6. If no Fulfiller is available, contact the Administrator. If the Administrator is not available, contact any Administrator. If no Administrator is available, contact the Manager.
7. Once the responsible Monitor has determined that a Fulfiller is available, and has forwarded the Helpdesk ticket to the Fulfiller via email, the procedure described within this document is complete. Further work on the Help Desk ticket is performed according to existing Problem Report procedures.

Note

Although accessing the ITSB, Legacy HelpDesk mailbox directly is not required to execute the procedures described in this document, it may be helpful to have this access. To set up your Outlook to include this mailbox, please reference the document entitled "How to Connect to Legacy Helpdesk Mailbox" in the How To section of the Legacy web page.



Last Updated: 05/09/2007

Version: 3.0

Almeida, Roberta

From: [REDACTED]
Sent: Wednesday, May 28, 2008 7:48 AM
To: [REDACTED]; Almeida, Roberta
Cc: [REDACTED]
Subject: Helpdesk Ticket Monitoring team for 06/01-30/2008

Hi all,
You are scheduled to be on the Helpdesk Ticket Monitoring team for 06/01-30/2008.

Primary Monitors: [REDACTED]
Secondary Monitors: [REDACTED], Robbie Almeida

I will update the ITSB, Legacy Helpdesk Support group email distribution list with your names on 06-01, and will send a test email to ITSB, Legacy Helpdesk to confirm that you are connected to the Helpdesk Mailbox. When you receive the test email forwarded by the Helpdesk, please confirm receipt by sending me an email.

Before 06-01-2008, please read the procedures on the unit website for Legacy Helpdesk Tickets, work together to set up your team schedule for the month in the Helpdesk Monitor Schedule, and provide me with a copy of your team schedule.

Let me know if you have questions . . .

Thanks,
[REDACTED]

[REDACTED]
Senior Programmer Analyst
CalPERS - ITSB/TSSD
795-[REDACTED]



Almeida, Roberta

From: [REDACTED]
Sent: Wednesday, March 26, 2008 8:07 AM
To: [REDACTED]; Almeida, Roberta; [REDACTED]
Cc: [REDACTED]
Subject: April 2008 Legacy Helpdesk Duty

Hi all,
You are scheduled to be the Helpdesk Ticket monitoring team for 04-01/30-2008.

Primary Monitors: [REDACTED] Robbie Almeida
Secondary Monitors: [REDACTED]

I will update the ITSB, Legacy Helpdesk Support group email distribution list with your names on 04-01, and will send a test email to ITSB, Legacy Helpdesk to confirm that you are connected to the Helpdesk Mailbox. When you receive the test email, please confirm receipt by sending me an email.

Before 04-01-2008, please read the procedures on the unit website for Legacy Helpdesk Tickets, work together to set up your team schedule for the month in the Help Desk Monitor Schedule, and provide me with a copy of your team schedule.

Let me know if you have questions . . .
Thanks,

[REDACTED]
Senior Programmer Analyst
CalPERS - ITSB/TSSD

795-[REDACTED]



Almeida, Roberta

From: [REDACTED]
Sent: Wednesday, May 28, 2008 7:48 AM
To: [REDACTED], Almeida, Roberta
Cc: [REDACTED]
Subject: Helpdesk Ticket Monitoring team for 06/01-30/2008

Hi all,
You are scheduled to be on the Helpdesk Ticket Monitoring team for 06/01-30/2008.

Primary Monitors: [REDACTED]
Secondary Monitors: [REDACTED] Robbie Almeida

I will update the ITSB, Legacy Helpdesk Support group email distribution list with your names on 06-01, and will send a test email to ITSB, Legacy Helpdesk to confirm that you are connected to the Helpdesk Mailbox. When you receive the test email forwarded by the Helpdesk, please confirm receipt by sending me an email.

Before 06-01-2008, please read the procedures on the unit website for Legacy Helpdesk Tickets, work together to set up your team schedule for the month in the Helpdesk Monitor Schedule, and provide me with a copy of your team schedule.

Let me know if you have questions . . .
Thanks,

[REDACTED]
Senior Programmer Analyst
CalPERS - ITSB/TSSD
795-[REDACTED]



Exhibit K

Benefits Maintenance Function List

Overview:

This list provides detailed information pertaining to the various areas of responsibility within the Benefits System. ITSB SMEs are listed in the order they are to be called for production problems. Those identified with an asterisk(*) are scheduled to learn the functions they are associated with.

Function	Process Freq	Batch Job Name	Batch Program Prefix	Online Entry Pt. Program	Diff 5=Hi 1=Lo	Freq 5=Hi 1=Lo	Function Lead	ITSB SME	User Contact
CASE ESTABLISHMENT:									
Retirement Estimates					5	4	Walt	Edward 4 Walt 5 Robbie 4 Mike 3 Sukhie 3 *Heather	Leticia
Estimate Request Screens	CICS			EST000					
MSS-Estimate Requests	EntireX			EST000					Sean
On Demand Estimates	DMD	PAESTBEN	BCM, CRI	EST012					
Case Assembly, Audit and Calc	D	PABENE1A	EST, BCM,						
	D	PABENE2A	BRC						
Generate CRS Transcripts	D	PABENE1B	CRI						
	D	PABENE2B							
Print Estimate output	D	PABENE1C	BCM, BRC						
	D	PABENE2C							
AMS Estimates	A	PACRSBEN	BCM, ASC						Sean
	A	PACRSMRG							

This document was prepared by Information Technology Services Division and remains the property of the California Public Employees' Retirement System

Document Reference: C:\Documents and Settings\JTourvi\Local Settings\Temporary Internet Files\01.K7\Maintenance Function List Benefits.doc (Version 1.0.5 Revised/changed 04/12/06 11:41 AM)

Function	Process Freq	Batch Job Name	Batch Program Prefix	Online Entry Pt. Program	Diff 5=Hi 1=Lo	Freq 5=Hi 1=Lo	Function Lead	ITSB SME	User Contact
BES Estimates	D D D	PABESDA2 PABESDA3 PABESDA4	BCM, BES, ASC						
Retirement Applications					5	4	Edward	Edward 4 Walt 5 Robbie 4 Sukhie 3	Reyna Marlene
Application Entry Screens				BAP100P0					
Extract Application Trans.	D D	PABNDA1 PABNDA2	BAP						
Assemble and Audit Application	D D	PABNDC1 PABNDC2	CRA, BCM, BRC						
Generate Current Year CRS Transcripts	D D	PABNDD1 PABNDD2	CRI						
Generate Prior Year CRS Transcripts	D D	PABNDE1 PABNDE2	CRI						
Print PCPs and Calc Sheets	D D	PABNDG1 PABNDG2	BCM						
Print Labels	D D	PABNDH1 PABNDH2	BRO						
Application Change					5	4	Edward	Edward 4 Walt 5 Robbie 4 Sukhie 3	Reyna Marlene
Change Screens				BMT001					
Extract Application Change Trans.	D D	PABNDA1 PABNDA2	BMT						
Extract Key Entry Trans.	D	PABENKDE	SORT						

This document was prepared by Information Technology Services Division and remains the property of the California Public Employees' Retirement System
 Document Reference: C:\Documents and Settings\JFourvri\Local Settings\Temporary Internet Files\OLK7\Maintenance Function List Benefits.doc (Version 1.0.5 Revised/changed 04/12/06 11:41 AM)

Function	Process Freq	Batch Job Name	Batch Program Prefix	Online Entry Pt. Program	Diff 5=Hi 1=Lo	Freq 5=Hi 1=Lo	Function Lead	ITSB SME	User Contact
Accelerated Adjustment Release	D D	PABNAJA1 PABNAJA2	BRA	N/A	5	3		Walt 4 Mike 3 Robbie 3 Sukhie 3	
Transfer AFP reports to DMS	D D	PABNDFT5 PABNDFT6	FTP						
Additional Service Adjustment Release				PRQ110	5	3			
Deceased Annuitant Adjustment Release	D	PABEND1F	BRA3, BSP	PRQ002	4	1		Walt 4 Sukhie 3	
Survivor Continuance Contract Adjustment (15% Allowance Increase)	REQ	PABENINC	BIN	N/A	3	1			
1-6% Allowance Increase (SB400)				N/A	5	3			
PopUp Adjustment	D	PABNAJB2	BRC	PRO260P0				Robbie 5 Mike 3	
ReCalc Adjustments	D	PABNAJB2	BRA	PRO265P0				Robbie 5 Mike 5 Sukhie 4	
CRS Update Transaction Processing	D	PABEND7	BRO017	N/A	1	1	Bahjat	Sukhie 3	

This document was prepared by Information Technology Services Division and remains the property of the California Public Employees' Retirement System
 Document Reference: C:\Documents and Settings\JFourri\Local Settings\Temporary Internet Files\01.K7\Maintenance\Function List Benefits.doc (Version 1.0.5 Revised/changed 04/12/06 11:41 AM)

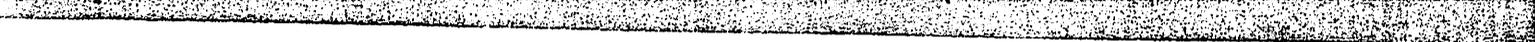


Exhibit L

Almeida, Roberta

From: [REDACTED]
Sent: Wednesday, June 05, 2002 2:02 PM
To: Almeida, Roberta
Subject: attached SOW for next year
Attachments: SOW ITSD RIBS Support - Robbie.doc

Robbie,

I've drafted this to get ready for next year's work. As we discussed, it reflects 8 hour days, state holidays off and assumes a three week vacation each year. Please review it, fill in the parts about your address and phone numbers, fix the firm name if I blew it, and then sign it and return it to me for processing.

Thank you.

[REDACTED]



SOW ITSD
Support - Robi