



Pension and Health Benefits Committee

Agenda Item 6a

November 14, 2018

Item Name: Revised Proposed Regulation for the Definition of Full-Time Employment

Program: Employer Account Management Division

Item Type: Action

Recommendation

California Public Employees' Retirement System (CalPERS) team members recommend the Pension and Health Benefits Committee (PHBC) approve the revised proposed regulations for a 15-day comment period and recommend approval to submit the final rulemaking package to the Office of Administrative Law (OAL) upon conclusion of the comment period, so long as no public comments are received.

Executive Summary

Team members amended the proposed regulation text (Attachment 1) to address OAL's concerns with the original proposed text.

Strategic Plan

This agenda item supports the 2017-22 CalPERS Strategic Plan, Risk Management goal to cultivate a risk-intelligent organization and the objective to enhance compliance and risk functions throughout the enterprise.

Background

At the February 2018, Board of Administration (Board) meeting, the Board approved the proposed regulatory action defining "full-time" employment. The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register (File Number Z-2018-0402-03) on April 13, 2018. The 45-day comment period commenced on April 13, 2018 and closed on May 28, 2018. CalPERS team members did not receive any public comments or requests for a public hearing during this period.

At the June 2018 Board meeting, the Board approved the proposed Definition of Full-Time Employment Regulation and submission of the final rulemaking package to OAL. On August 23, 2018, OAL contacted CalPERS with concerns regarding the proposed regulatory text,

which have been addressed in the revised proposed regulation text. With the Board's approval of the revised proposed regulation, CalPERS will commence a 15-day comment period.

Analysis

OAL had the following concerns:

- What is considered equivalent to 34 hours per calendar week?
- What criteria would CalPERS use to approve an exemption for less than 34 hours defined as full-time?

To address OAL's concerns, the following changes were made to the proposed regulation text:

- To clarify what is considered equivalent to 34 hours per calendar week, the example of a 68-hour work week was removed. Instead, the minimum number of hours for each type of reporting schedule was added: 67 hours bi-weekly, 72 hours semi-monthly, 133 hours quadri-weekly, and 144 hours monthly.
- To address OAL's concerns regarding exemption criteria, the sentences requiring employers to submit a request for exemption including what the employer considers the normal work week for full-time employment for its employees has been removed from the regulation text. CalPERS' current definition of full-time employment is 34 to 60 hours per calendar week as established by a 1980 Board resolution. The proposed regulation sets 34 hours as the minimum number of hours per week for a full-time employment work period and under the Board resolution, CalPERS has not received a request for an exemption to establish a full-time employment work period of less than 34 hours per week. Historically, CalPERS received and approved requests to establish a full-time employment work period of greater than the Board resolution upper limit of 60 hours per week work period. This proposed regulation removed the 60 hours per week upper limit, therefore the exemption option is no longer necessary.

Additional text changes and reorganization were made for clarity as follows:

- Section 574(a) directs employers to notify CalPERS of the normal work period or periods which the employer considers to be full-time for employees in the same group or class of employment. The sentence, "This regulation does not apply to the extent it conflicts with a provision in the Public Employees' Retirement Law (e.g., Government Code section 20636.1(b)(1))." was removed because Section 547(c) now incorporates the definition of "full-time" employment for classified members contained in section 20636.1(b)(1). In addition, a clarifying amendment was made to the first sentence in in Section 574(a) to change "what" to "the number of hours". More precise language was needed to clarify that "what" means "the number of hours" in the context of a normal work period for full-time employment.
- Section 574(b) lists the work schedules equivalent to 34 hours per calendar week. The addition of work schedules equivalent to 34 hours per calendar week provides employers with more clear guidance on what "full-time" employment means for the purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. The hours listed in this section are consistent with Government Code section 20962 regarding service credit granted for full-time employment for persons employed on an hourly basis. The number of hours has been written in numeric format.

- Section 574(c) defines “full-time” employment for classified members and directs school employers to report compensation earnable and pensionable compensation to CalPERS. Section 574(c) defines “classified members” consistent with Government Code section 20636.1 regarding compensation earnable for school members.

Budget and Fiscal Impacts

The proposed regulatory action is technical and does not impose any budget or fiscal impacts to the state.

Benefits and Risks

Adopting this regulation would clarify CalPERS’ interpretation of “full-time” employment and provide uniformity for CalPERS, its members, contracting agencies, and other stakeholders to ensure consistent use of the term.

Attachment

Attachment 1 – Regulation Text with Revisions

Renee Ostrander, Chief
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