

Title 2. Administration

Proposed Adoption of Section 574.1 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

§574.1 Definition of Limited Duration Employment

(a) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, “limited duration” is defined as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period.

(1) The first day the retired person serves any hours in the appointment or the effective date of this subdivision, whichever is later, shall be the appointment start date and initiates time counted towards the twenty-four consecutive month limit. Employment by a retired person prior to the effective date of this subdivision will not count towards the limit of twenty-four consecutive months.

(2) A CalPERS-covered public employer must notify CalPERS of an appointment end date not to exceed twenty-four consecutive months from the appointment start date and any changes to the appointment end date, including but not limited to the end date of an extension as prescribed in paragraph (3) of this subdivision and end date of an extension authorized under an exemption as prescribed in paragraph (6) of this subdivision.

(3) A CalPERS-covered public employer may extend the appointment no more than twice, up to twelve consecutive months per extension, beyond the limit of twenty-four consecutive months under paragraph (a) of this subdivision, if the applicable conditions below are met:

(A) The CalPERS-covered public employer’s governing body certifies by resolution at a public meeting each of the following:

- (i) The position title,
- (ii) The description of the duties to be performed during the extension,
- (iii) The reason the appointment needs to be extended,
- (iv) The reason the duties under subparagraph (ii) above cannot be performed by non-retired employees,
- (v) That a plan is in place to transition the duties under subparagraph (ii) above to non-retired employees or another retired person,
- (vi) The anticipated end date for the extension, and
- (vii) Its approval of the extension.

(B) (i) Except as otherwise provided in this paragraph, for an appointment with the state, the Department of Human Resources certifies by memorandum each of the items in subparagraph (A) above.

(ii) For an appointment with the California State University, the Trustees of the California State University certifies by resolution at a public meeting each of the items in subparagraph (A) above.

(iii) For an appointment with the legislature, the Senate Committee on Rules or the Assembly Rules Committee certifies by resolution at a public meeting each of the items in subparagraph (A) above.

(4) The first extension period under paragraph (3) of this subdivision starts the day after the end of the twenty-four consecutive month period under paragraph (a) of this subdivision and the second extension period under paragraph (3) of this subdivision starts the day after the end of the first extension period, thirty-six consecutive months from the appointment start date, regardless of whether or when the CalPERS-covered public employer extended the appointment and regardless of how many months or hours in those months the retired person served during either extension period. The retired person may not continue serving in the appointment beyond the end of the twenty-four consecutive month or thirty-six consecutive month periods described above until the CalPERS-covered public employer satisfies the applicable conditions as prescribed in paragraph (3) of this subdivision per extension.

(5) The CalPERS-covered public employer shall retain the records reflecting the certifications required in paragraph (3) of this subdivision for the position. The CalPERS-covered public employer shall provide this information to CalPERS during the exemption request process described in paragraph (6) of this subdivision and upon request during any future investigations or audits.

(6) If a CalPERS-covered public employer determines the appointment is needed beyond forty-eight consecutive months from the appointment start date, as calculated under paragraph (4) of this subdivision, the CalPERS-covered public employer may request one of two exemptions per appointment to the limit of two extensions prescribed in paragraph (3) of this subdivision by filing a written request with the board as prescribed below. The written request for an exemption must be received by CalPERS for review within twelve consecutive months following the end of the second extension period under paragraph (3). The board shall grant or deny the exemption request within 60 days of receiving the request, which must include records reflecting all of the certifications required in subparagraphs (B) and (C) below, as applicable. The retired person may not continue serving in the appointment beyond the end of the forty-eight consecutive month period or any subsequent twelve consecutive month period authorized under a previous board-approved exemption until the board approves an exemption for the appointment as prescribed below.

(A) A request for an exemption shall be either:

(i) For an exemption authorizing a continuous extension if the appointment does not exceed 120 hours per fiscal year, or

(ii) For an exemption authorizing an extension of twelve consecutive months, regardless of how many months or hours in those months the retired person served during that extension period. The date on which the exemption request is granted by the board or the first day following the end of the prior extension limit of twelve consecutive months for which the exemption request is granted by the

board, whichever is later, initiates time counted towards the subsequent extension limit of twelve consecutive months for the exemption. A CalPERS-covered public employer may request this exemption more than once, in accordance with the requirements of subparagraphs (B) and (C) below, as applicable. Any written exemption request for a subsequent extension of twelve consecutive months pursuant to this subparagraph must be received by CalPERS for review within twelve consecutive months following the end of the most recent extension limit of twelve consecutive months.

(B) The board will grant one of the exemptions described in subparagraph (A) above per appointment if the applicable conditions in this subparagraph and subparagraph (C) below are met. The CalPERS-covered public employer's governing body must certify by resolution at a public meeting each of the items in subparagraphs (i) through (viii) below, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar.

- (i) The position title,
- (ii) The description of the duties to be performed,
- (iii) The reason the appointment needs to be extended,
- (iv) The reason the duties under subparagraph (ii) above cannot be performed by either non-retired persons or another retired person,
- (v) Either the reason a plan to transition one or more of the duties under subparagraph (ii) above to non-retired employees or another retired person was not successful or the reason that such a plan cannot be implemented,
- (vi) Either that the CalPERS-covered public employer completed a recruitment within the twelve consecutive months prior to the date of the exemption request for the duties under subparagraph (ii) above and was unable to fill the position with that recruitment or the reason that such a recruitment cannot be completed,
- (vii) The anticipated end date for an exemption, and
- (viii) Its approval of the exemption.

(C) (i) Except as otherwise provided in this paragraph, for an appointment with the state, the Department of Human Resources must certify by memorandum each of the items in subparagraph (B) above, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable.

- (ii) For an appointment with the California State University, the Trustees of the California State University must certify by resolution at a public meeting each of the items in subparagraph (B) above, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar.

(iii) For an appointment with the legislature, the Senate Committee on Rules or the Assembly Rules Committee must certify by resolution at a public meeting each of the items in subparagraph (B) above, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar.

(7) A report of the exemptions granted pursuant to paragraph (6) of this subdivision will be provided to the board annually and publicly available.

(8) For purposes of this subdivision, an appointment is defined as either a post-retirement position under which no duties overlap with the duties of another post-retirement position subject to this regulation with the same CalPERS-covered public employer that the retired person performed after retirement, or a post-retirement position for a different CalPERS-covered public employer from any previous CalPERS-covered public employer the retired person performed duties for after retirement while in a position subject to this regulation.

(9) Retired persons and CalPERS-covered public employers in violation of this subdivision will be subject to Government Code sections 21202, 21220, and 7522.56, as applicable.

(b) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, if the terms of a collective bargaining agreement explicitly provide the duration of permissible employment for the retired person, then subdivision (a) shall not apply to the CalPERS-covered public employer and retired person subject to that collective bargaining agreement but shall instead be subject to "limited duration" defined in this subdivision. "Limited duration" is defined as the duration provided in the applicable collective bargaining agreement, not to exceed sixty consecutive months, for the post-retirement appointment of a retired person in the employ of a CalPERS-covered public employer. The appointment duration is consecutive regardless of how many months or hours in those months the retired person served in the appointment during that appointment duration.

(1) The first day the retired person serves any hours in the appointment shall be the appointment start date and initiates time counted towards the duration limit defined in the applicable collective bargaining agreement or sixty consecutive months, whichever is less.

(2) A CalPERS-covered public employer must notify CalPERS of an appointment end date not to exceed the duration defined in the applicable collective bargaining agreement or sixty consecutive months from the appointment start date, whichever is less, and provide CalPERS a copy of the applicable collective bargaining agreement specifying the duration of that post-retirement appointment.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, for post-retirement appointments in effect prior to the effective date of this subdivision, the appointment start and end dates shall be the start and end dates established in accordance with the collective bargaining agreement prior to the effective date of this subdivision.

(4) A retired person serving in a post-retirement appointment in accordance with this subdivision cannot serve in another post-retirement appointment with the same CalPERS-covered public employer subject to this regulation.

(5) Retired persons and CalPERS-covered public employers in violation of this subdivision will be subject to Government Code sections 21202, 21220, and 7522.56, as applicable.

(c) For purposes of clarifying paragraph (3) of subdivision (a) of section 571, "limited duration" is defined as a limit of twenty-four consecutive months for an employee to serve in an upgraded position/classification, regardless of how many months or hours in those months the employee served in the upgraded position/classification during that twenty-four consecutive month period.

(1) The first day the individual serves any hours in the upgraded position/classification or the effective date of this subdivision, whichever is later, initiates time counted towards the twenty-four consecutive month limit. Employment in an appointment to an upgraded position/classification prior to the effective date of this subdivision will not count towards the limit of twenty-four consecutive months.

(2) An individual may serve in the same upgraded position/classification more than once within the twenty-four consecutive month period but may not exceed a time period of twenty-four consecutive months. A new twenty-four consecutive month period is not initiated unless the conditions set forth in paragraph (3) of this subdivision are met.

(3) An individual may serve in the same upgraded position/classification more than once and initiate a new twenty-four consecutive month period if the appointment to the upgraded position/classification is:

(A) The individual's first appointment subsequent to a permanent appointment held by a different individual for the same upgraded position/classification, or

(B) The individual's first appointment subsequent to a different individual that retained the permanent appointment for the same upgraded position/classification returning to the permanent appointment from an approved leave.

Authority Cited: Sections 7522.02(j) and 20121, Government Code.

Reference: Sections 7522.56, 20636, 20636.1, 21202, 21220, 21224, and 21229 Government Code; section 571 of Title 2, California Code of Regulations.