

Public Comments Received During the 15-Day Comment Period

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Attachment 2 provides a comprehensive summary and CalPERS' proposed response to all comments received.

Working After Retirement Appointments

Definition of Limited Duration

The Definition of "Limited Duration" is Effectively Unlimited

Comment 1.1:

One commenter stated due to the inclusion of extensions and exemptions, and the fact that there is no upper limit of how many exemptions may be requested per appointment, an appointment of "limited duration" can be indefinite.

Proposed Response:

While the proposed regulation does not specify a limit on the number of exemptions a CalPERS-covered public employer (hereinafter referred to as employer) may request per appointment, the proposed regulation sets standards and criteria the employer must meet to extend the post-retirement appointment. CalPERS amended the standards and criteria in response to the public comments received during the 45-day comment period, to continue to take into account the differing business needs of the varying employers while requiring employers to demonstrate efforts to conclude the post-retirement appointment. In addition to the standards and criteria, the employer must satisfy all of the criteria each time the employer extends the post-retirement appointment through the extension or exemption processes.

Alternatives

Comments 1.3, 2, 3, 4.1, 4.2:

Two commenters provided the following suggested amendments:

- Define "limited duration" as:
 - Twelve consecutive months
 - Forty-eight consecutive months

Three commenters stated that the current method of total hours (960 hours per fiscal year) that a retiree can work per year is sufficient to define "limited duration" and should not be changed. One of the commenters added that the 180-day wait period required by Government Code section 7522.56(f) also helps to ensure that organizations plan to meet their future operational needs without using the retired person.

Proposed Response:

CalPERS is rejecting the suggestions to change the definition of "limited duration" to either 12 consecutive or 48 consecutive months. The proposed definition as a limit of 24 consecutive months per appointment aligns with Government Code section 19080.3, which states the State of California may authorize limited term appointments up to a total duration of two years for temporary staffing needs.

There is currently no definition of the term "limited duration." The 960-hour limit for post-retirement appointments is a separate limitation from the requirement that the appointment be of limited duration.

Definition of Appointment

Complexity of Overlapping Duties in Post-Retirement Appointments with the Same Employer

Comment 5.1:

One commenter stated that not allowing post-retirement appointments with similar or overlapping duties with the same employer decreases post-retirement employment opportunities for retirees and flexibility for employers to use retirees who possess specialized skills.

Proposed Response:

Prohibiting overlapping duties between multiple post-retirement appointments with the same employer is intended to ensure that the employer does not circumvent the extension and exemption processes by appointing the retired person to a “new” post-retirement appointment performing the same duties. The extension and exemption processes provide the employers the flexibility to retain the retired person when needed to perform duties requiring specific skills.

A retired person can begin a new post-retirement appointment for the same employer if there are no overlapping duties between the new post-retirement appointment and a previous post-retirement appointment.

Clarification on Overlapping Duties

Comment 5.2:

One commenter asked for clarification on what would be considered overlapping duties. One of the examples that the commenter gave comparing two appointments characterized the skills as being the same, but the specific duties and projects assigned to each appointment as not overlapping.

Proposed Response:

Overlapping duties refer to specific duties that will be performed. For example, if an employer appoints a retired person with specific skills in contracts and negotiations to negotiate one bargaining contract and then appoints the same retired person to negotiate a different bargaining contract, those duties would be overlapping.

Alternative

Comment 5.3:

One commenter suggested an alternative that allows overlapping duties between post-retirement appointments for the same employer as long as there is a 12 month or longer break between post-retirement appointments.

Proposed Response:

CalPERS is rejecting the suggested alternative. CalPERS interprets the applicable statutes to mean a single post-retirement appointment utilizing the retired person’s skills to perform that specific work of limited duration for that specific employer. The suggested alternative does not limit how many post-retirement appointments the employer may initiate for the retired person or require any standards and criteria to be met to initiate a new post-retirement appointment with overlapping duties except for a 12 month or longer break. If the employer has a business need for the retired person to continue utilizing the specific skills to perform work in the post-retirement appointment, the employer must request an extension or exemption, as applicable, receive its governing body’s, and for exemptions, CalPERS’ approval, and meet all of the additional standards and criteria necessary to extend the post-retirement appointment. The overlapping duties restriction, along with the 12-month time limit to request an exemption,

reduces the risk of a post-retirement appointment continuing for an extended period of time and circumventing the extension and exemption processes as required by the proposed regulation.

Extension and Exemption Process and Criteria

Lack of Transparency

Comment 1.2:

One commenter stated that for state post-retirement appointments, the Department of Human Resources certifies by memorandum its approval of extension and exemption requests and can potentially extend an appointment indefinitely without challenge or third-party evaluation.

Proposed Response:

State post-retirement appointment extension and exemption approvals by the Department of Human Resources is consistent with the approval authority for waiving the 180-day wait period as prescribed in Government Code section 7522.56(f)(2)(A) and effectuating past Executive Orders impacting state post-retirement appointments in which the Governor directed individual state employers to notify the Department of Human Resources of any waivers pursuant to the applicable Executive Order. Further, the proposed regulation's extension and exemption approval requirement is stricter than the above-referenced statute. For the 180-day waiting period, the individual state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position prior to the completion of the 180-day waiting period, with the Department of Human Resources providing approval of the appointment. For extending the state post-retirement appointment, the Department of Human Resources must certify the reason the appointment needs to be extended and that the other criteria are met. For exemption requests, CalPERS will be reviewing all of the documentation to ensure the standards and criteria for the exemption are met and will determine whether to approve or deny the exemption request. In addition, a report of exemptions granted will be presented to the CalPERS Board and publicly available annually to increase transparency.

Too Restrictive

Comments 5.4, 6.1, 7.1, 8.1, 9.1, 10.1, 12.1, 13.1, 14.1, 15.1

Ten commenters stated that the exemption process was still too restrictive, stating that the 12-month limited window following the expiration of the extensions restricts employers from determining when they would be able to request exemptions for retired annuitants. One of the commenters stated that more employers may try extending appointments to avoid losing the specific skills that a particular retired person provides, even if the employer does not anticipate needing that specific skill within 12 months of the appointment ending. Nine of the commenters stated that the timeframe to request an exemption or when a retired annuitant appointment may occur are not supported by Government Code section 21224. As a result, those commenters request the removal of the 12-month window for requesting an exemption.

Proposed Response:

CalPERS is rejecting the suggestions to remove the 12-month window for requesting an exemption. CalPERS amended the proposed regulation to provide a window for requesting an exemption, as the initial proposed regulation required the employer to submit the request by the end date of the second extension or last exemption. Adding a 12-month window to request an exemption was in response to the feedback received during the 45-day comment period stating that having to submit the request by the end date of the second extension or last exemption was too restrictive. The 12-month window is a balance between providing employers more flexibility on when they can submit the exemption request and providing a time limit for when the

employer can no longer extend the post-retirement appointment, ensuring the post-retirement appointment cannot resume at any time.

CalPERS interprets Government Code sections 7522.56, 21224, and 21229 to refer to a single appointment of a retired person to utilize skills needed to perform work of limited duration. As a result, if the employer needs a retired person's skills to perform the same duties in a post-retirement appointment beyond the initial 24 consecutive month period, two 12 consecutive month extension periods, and any subsequent 12 consecutive month exemption period as applicable, then there needs to be a time limit on when the employer may request an exemption to ensure that the employer cannot resume the appointment at any time. It is the employer's responsibility to either transition the skills to another individual or request the exemption prior to the time limit expiring.

Not Restrictive Enough

Comment 1.2:

One commenter stated that there are no standards to allow the Department of Human Resources to determine whether a certification is warranted and the criteria are vague in the absence of any standards. The commenter questioned how the Department of Human Resources will know the reason the state employer provides is sufficient and stated that the lack of standards means any reason would be deemed sufficient. The commenter further stated that based on their reading of the proposed regulation, CalPERS has no discretion to impose its own standards for evaluating the certifications.

Proposed Response:

Following the 45-day comment period, CalPERS amended the proposed regulation to increase the rigor for extending appointments by adding additional criteria for the employer to meet to extend the post-retirement appointment during the extension or exemption processes. The proposed regulation requires certifications similar to those required under Government Code section 7522.56(f). In addition to requiring the employer's governing body to certify their approval of the appointment extension and the reason the work required under the appointment cannot be performed satisfactorily by non-retired employees, and for an exemption, that the employer completed a recruitment and was unable to fill the position with that recruitment, CalPERS added criteria requiring the employer's governing body to certify the reason the appointment needs to be extended and that a plan to transition the duties to a non-retired employee or another retired person is in place. For exemptions, CalPERS added criteria requiring the employer's governing body to certify the reasons the transition plan was unsuccessful or could not be implemented, another retired person could not perform the duties required, and a recruitment was unsuccessful or could not be completed. As a result, the criteria require the employer to provide a substantive response explaining its reasoning and show a good faith effort that it tried to transition the duties or complete a recruitment. CalPERS will be reviewing each exemption request to ensure the criteria are met, including the employer's explanation, and based on its review, CalPERS will determine whether the request is approved or denied.

Alternatives

Comments 1.3, 4.3, 4.4, 16.4:

One commenter proposed an alternative to the number of extensions and the criteria for the extension. The alternative is a one-time extension for up to twelve months. The proposed alternative criteria and process include:

- The employer submits the written request directly to CalPERS

- The request includes an explanation for the necessity of the extension, including any supporting documentation to justify the request
- A copy of the request must be provided to the applicable bargaining unit
- The CalPERS Board makes a finding in a public meeting, after hearing public comment on the request, that the request is reasonable and supported by facts and circumstances.

Two commenters stated that having the first extension begin immediately following the end of the 24 consecutive month period and the second extension begin immediately following the end of the first extension shortens the extension period if the employer does not receive approval for the extension before the end of the initial 24 consecutive month period. Both commenters are proposing the extension time periods should not be continuous from the initial 24 consecutive month period but rather begin when the employer completes the requirements of the extension. In addition, one commenter stated that if this proposed change is not adopted, it could result in employers having to hire contract staff, which usually costs more than hiring retired annuitants.

One commenter suggested allowing employers to request the exemption option of a continuous extension if the appointment does not exceed 120 hours per fiscal year at the beginning of the appointment instead of waiting until the 24 consecutive month period and two extension periods conclude. The commenter stated that for appointments that require limited hours, having the employer go through the administrative extension and following exemption processes is unnecessary.

Proposed Response:

CalPERS is rejecting the proposed alternative to reduce the number of extensions from two 12 consecutive month extensions to one 12 consecutive month extension. During the 45-day comment period, CalPERS considered all comments received and drafted the proposed regulation to reflect the feedback received, balancing comments from all parties. The two 12 consecutive month extensions provide employers flexibility in addressing their own business needs while the additional criteria for requesting an extension increases transparency in explaining the reason the appointment needs to be extended and that a plan is in place to transition the duties of the appointment to another individual. In regard to the proposed alternative criteria and processes:

- CalPERS is rejecting the proposed alternative to have the employer submit the written request for an extension directly to CalPERS, without submitting the request to its governing body or the Department of Human Resources, as applicable, first. The employer's governing body or the Department of Human Resources' certification via resolution or memorandum are necessary to ensure that they reviewed the criteria and determined the extensions and exemptions are necessary. In addition, having the employer's governing body, or the Department of Human Resources for state post-retirement appointments, approve the extension and exemption requests is consistent with the approval process for employers to waive the 180-day waiting period in accordance with Government Code section 7522.56(f).
- Regarding the proposed alternative to include an explanation for the necessity of the extension, the proposed regulation already requires employers to state the reason the appointment needs to be extended, as well as the reason those duties cannot be performed by either non-retired persons (extensions and exemptions) or another retired person (exemptions). Those two criteria require the employer to demonstrate the necessity for the extension. CalPERS is

rejecting the proposed alternative to require the employer to submit supporting documentation to justify the request. If the employer's governing body chooses to require supporting documentation to justify the request, they may do so.

- CalPERS is rejecting the proposed alternative to require employers to provide a copy of the request to the applicable bargaining unit. Similar to the operation of Government Code section 7522.56(f), employers are not required to provide a copy of the request for waiving the 180-day waiting period to the applicable bargaining unit. In addition, a report of exemptions granted will be presented to the CalPERS Board and publicly available annually to increase transparency.
- CalPERS is rejecting the proposed alternative to have the CalPERS Board make a finding in a public meeting, after hearing public comment on the request, on whether the request is reasonable and supported by the facts and circumstances. The proposed regulation specifies standards and criteria that must be met to extend the appointment. The proposed alternative to remove the criteria and have the Board make a determination based on the facts and circumstances presented to them at the public meeting does not provide any standards or criteria for the Board to base their decision and reduces the rigor that is included in the proposed regulation. In addition, during the 45-day comment period, employers expressed concern regarding potential delays in receiving CalPERS' approval if the request was placed on the CalPERS Board meeting agenda. To balance the concerns and need for rigor and transparency, CalPERS set a 60-day time period for reviewing all exemption requests.

CalPERS is rejecting the proposed alternative to allow the extensions to be non-consecutive and the extension period to be a full 12-month extension regardless of when the extension is certified by the employer's governing body. Nothing in the proposed regulation precludes an employer from requesting an extension prior to the end of the initial 24 consecutive month time period or end of the first 12 consecutive month extension to allow a retired person to be available to serve in the post-retirement appointment as needed for the full 12 consecutive months following the conclusion of the initial 24 consecutive month time period or first 12 consecutive month extension. The 48 consecutive month time period provides employers flexibility to extend the post-retirement appointment twice if the retired person's skills are needed beyond the initial 24 consecutive month time period, while providing a definitive time period for the appointment to conclude. Even if the employer decides to hire contract staff, if the contract staff is a retired person who is receiving a pension benefit from CalPERS and performs the same or similar work to the work the retired person performed as an active employee or work performed by an active employee of that employer, an employer-employee relationship may exist. As a result, the employment may be determined to be a working after retirement appointment and subject to the working after retirement restrictions, including this proposed regulation.

CalPERS is rejecting the proposed alternative to allow employers to request the exemption option of a continuous extension if the appointment does not exceed 120 hours per fiscal year at the beginning of the appointment instead of waiting until the 24 consecutive month period and two extension periods conclude. The initial 24 consecutive month time period, along with the two 12 consecutive month extension periods, give the employers an opportunity to utilize the retired person's skills and evaluate the business need for a continuous extension. Allowing an employer to initiate a continuous limited hour post-retirement appointment (120 hours per fiscal year) at the beginning of the appointment would indicate there is a more permanent business need for the retired person's skills than for a limited duration and would not require the employer to re-evaluate the ongoing business need.

Proposed Process Amendments

Comments 6.2, 7.2, 8.2, 9.2, 10.2, 12.2, 13.2, 14.2, 15.2:

Nine commenters proposed amending the proposed regulation to include a clause stating that if the Board does not act within 60 days of receiving the request for exemption, the request will be deemed approved. The commenters stated that inserting this clause into the proposed regulation is necessary to guard against delays in the approval process.

Proposed Response:

CalPERS is rejecting the suggestion to include a clause stating that if the Board does not act within 60 days of receiving the request for exemption, the request will be deemed approved. The 60-day time period starts when CalPERS receives all required records that include extension and exemption certifications, as applicable. If there are any missing documents, CalPERS will contact the employer and the 60-day time period will not start until all documents are received. While CalPERS is aware of the employers' needs to have timely review and approval of the exemption requests, including a clause for an automatic approval after 60 days would not be prudent; CalPERS will review each exemption request along with all documents submitted to ensure all criteria and process requirements are met. In addition, a report of all approved exemptions will be presented to the Board at least annually. This report will provide the Board and public a comprehensive list of all the exemptions that CalPERS reviewed and deemed appropriate to approve. If a clause was added to automatically approve exemption requests after 60 days, the Board and public would not be able to distinguish between which exemptions were automatically approved and which were reviewed and approved by CalPERS. The employer is responsible for ensuring the exemption request includes all of the required certifications, the process is followed correctly, and the request is submitted timely to meet their own business need.

Comment 16.3:

One commenter expressed concern with the public meeting certification process stating that it was too administratively burdensome. The commenter stated that developing the mandated resolutions and placing the resolutions on the board's agendas are administratively burdensome. The commenter is requesting that employers required to take a resolution for approval to their governing body should instead have the same certification process as state appointments, extensions and exemptions approved via memorandum.

Proposed Response:

CalPERS is rejecting the suggestion to allow employers with a governing body to use the same certification process as state post-retirement appointments. The post-retirement appointment extension and exemption approval process is consistent with the approval process for waiving the 180-day wait period as prescribed in Government Code section 7522.56(f). To waive the 180-day wait period, the employer's governing body must approve the appointment in a public meeting.

Clarification of Criteria

Comments 6.3, 7.3, 8.3, 9.3, 10.3, 12.3, 13.3, 14.3, 15.3:

Nine commenters requested an amendment to proposed subparagraph (B) of paragraph (6) of subdivision (a) to change:

- "will" to "shall" when referring to the board granting one of the exemptions
- "applicable conditions" to "applicable certifications" for clarity stating that "applicable conditions" could be interpreted to refer to something other than the certifications

- “met” to “made and submitted” to mandate the board approves the exemption request if the certifications are made and submitted and not that the board will grant an exemption if the applicable conditions are met.

Proposed Response:

CalPERS is rejecting all of the proposed amendments to subparagraph (B) of paragraph (6) of subdivision (a). For consistent use of “will” versus “shall,” CalPERS will change “shall” to “will” in paragraph (6), “The board will grant or deny the exemption request...” The suggestion to change “applicable conditions” to “applicable certifications” would change the meaning of what is required for an exemption. Stating “applicable conditions” is intended to include more than the certifications that are included in the resolution, such as documentation for any previously approved extensions or exemptions and ensuring the certifications are conducted in accordance with the proposed regulation. Mandating that the Board approves the exemption request if the certifications are made and submitted would circumvent CalPERS’ review process. CalPERS will review each exemption request to ensure that all criteria and process requirements are met. CalPERS has the authority to deny an exemption request if the criteria or process requirements are not met.

Collective Bargaining Agreements**Clarification****Comment 5.5:**

One commenter stated that per paragraph (4) of subdivision (b) of the proposed regulation, a retired person would be ineligible for any subsequent post-retirement appointment with the same employer. The commenter further stated that if an employer had multiple collective bargaining agreements, whether “limited duration” was defined or not, the proposed regulation as written would prevent that retired person from working in a different post-retirement appointment for the same employer subject to any collective bargaining agreement.

The commenter suggests amending paragraph (4) of subdivision (b) to allow a retired person to be appointed to a subsequent post-retirement appointment that is subject to a different collective bargaining agreement and in a post-retirement position that has no overlapping duties with the first post-retirement appointment with the same employer.

Proposed Response:

CalPERS is rejecting the proposed amendment. The intent of the proposed regulation was for retired persons who serve in post-retirement appointments with durations provided by collective bargaining agreements to be a single post-retirement appointment for that particular employer, unless they had previously served in a post-retirement appointment under subdivision (a) of the proposed regulation for that same employer. Once a retired person serves in a post-retirement appointment with a duration provided by a collective bargaining agreement, that retired person cannot serve in another post-retirement appointment for that same employer.

Temporary Upgrade Pay Appointments**Clarification of “Position/Classification”****Comment 5.6:**

One commenter suggested that the term “position/classification” should be changed to only “position” for clarity. The commenter stated that for some employers, “classification” is broad and could cover many positions.

Proposed Response:

CalPERS is rejecting the suggestion to change “position/classification” to only “position.” The term “position/classification” is consistent with the term used in paragraph (3) of subdivision (a) of section 571 of Title 2, California Code of Regulations. The use of “position/classification” acknowledges that employers are not uniform in the use of the terms “position” and “classification,” and some employers use those terms interchangeably.

Other Comments

Reporting Appointment End Dates to CalPERS

Comment 16.2:

One commenter expressed concern with the requirement to report post-retirement appointment end dates to CalPERS as that would be administratively burdensome. The commenter identified a scenario in which the appointment was expected to conclude in six months, but due to the project being extended, the appointment concluded in nine months. In this scenario, the commenter is requesting clarification on what would be required to extend the appointment end date from six months to nine months from the appointment start date. As a result, the commenter provided a suggested amendment to change the requirement from notifying CalPERS of an appointment end date to notifying CalPERS of an appointment start date, which would then be used to establish the 24 consecutive month period.

Proposed Response:

As addressed in Agenda Item 5a, Attachment 3a at the November 2022 Pension and Health Benefits Committee, CalPERS is rejecting the suggested amendment to change the requirement from notifying CalPERS of an appointment end date to appointment start date. Having employers report the appointment end date to CalPERS is necessary to ensure the employer and retired person are aware of the post-retirement appointment end date, reduces the risk of an appointment exceeding the 24 consecutive month period without an extension or the limit of any other extensions or exemptions, and increases transparency on when the appointment is expected to conclude. If the appointment end date is six consecutive months from the appointment start date and the employer needs to extend the appointment to nine months, the employer would need to report the new end date to CalPERS. Since the appointment is within the 24 consecutive month period, the retired person can continue working in the post-retirement appointment while the employer updates the end date from six months to nine months. For extension and exemption periods of 12 consecutive months, if the appointment is within the 12 consecutive month period, the retired person can continue working in the post-retirement appointment while the employer updates the end date from six months to nine months.

Classification Exemptions from the Definition of Limited Duration

Comment 17:

One commenter requested an exemption from the scope of the proposed regulation for public safety agencies.

Proposed Response:

As addressed in Agenda Item 5a, Attachment 3a at the November 2022 Pension and Health Benefits Committee, CalPERS is rejecting the suggested amendment to exempt public safety agencies from the scope of the proposed regulation. The proposed regulation interprets the applicable statutes and is defining the term “limited duration,” and cannot exempt classifications as the applicable statutes apply to all groups or classifications.

Waiver of the Proposed Regulation During Emergencies

Comment 16.5:

One commenter requested CalPERS include a process for employers to request a waiver to some or all of the requirements in the proposed regulation during a declared local or state disaster emergency, public health crisis, or other emergency.

Proposed Response:

As addressed in Agenda Item 5a, Attachment 3a at the November 2022 Pension and Health Benefits Committee, CalPERS is rejecting the suggested amendment to include a process for employers to request a waiver to some or all of the requirements in the proposed regulation pertaining to post-retirement appointments during a declared local or state disaster emergency, public health crisis, or other emergency. The term “limited duration” is not used in the context of emergency post-retirement appointments. In addition, CalPERS does not have the authority to suspend statutory provisions. If the governor suspends the applicable working after retirement statutes during a declared local or state emergency, then the proposed regulation will also be suspended.

Union Dues or Retirement Contributions

Comment 18:

One commenter suggested that if a retired person is appointed into a position that a full-time employee would be appointed into and the retired person works beyond a set number of hours, which was not defined, then the retired person could pay dues to the appropriate union and retirement contributions to CalPERS.

Proposed Response:

CalPERS is rejecting the suggested amendment to require the retired person that is appointed to a temporary help position to pay dues to the appropriate union and retirement contributions to CalPERS. CalPERS does not have the authority to require the retired person to pay dues to the appropriate union or retirement contributions to CalPERS for the post-retirement appointment.

Consultant Cost Concerns

Comment 18:

One commenter expressed concerns regarding potential increase in costs to employers by utilizing consultants instead of retired annuitants. The commenter suggested that at the federal level, retired federal employees are not allowed to work as retired annuitants and often get hired by private companies for their specialized skills and knowledge. Those retired federal employees then work as consultants for the federal government using their specialized skills and knowledge, increasing costs to the federal government.

Proposed Response:

If a retired person works for an employer as a consultant and performs the same or similar work to the work the retired person performed as an active employee or work performed by an active employee of that employer, an employer-employee relationship may exist. As a result, the employment may be determined to be a working after retirement appointment and subject to the working after retirement restrictions, including this proposed regulation.

General Language Changes

Comment 19:

One commenter provided the following suggested amendments to the proposed regulation:

- Change the tense for the word “served” from past tense to present tense in subdivision (a), paragraph (4) of subdivision (a), subdivision (b), and subdivision (c)
- Remove the (i) numbering in subparagraph (B) of paragraph (3) of subdivision (a) and update accordingly, as well as in subparagraph (C) of paragraph (6) of subdivision (a)
- Change “certifies” to “certify” in current subparagraph (ii) of subparagraph (B) of paragraph (3) of subdivision (a) to align with “Trustees”
- Amend subparagraph (ii) of subparagraph (A) of paragraph (6) of subdivision (a) to correct grammatical errors and clarity.
- Divide the content in paragraph (8) of subdivision (a) into two subparagraphs for clarity
- Correct the sentence in subparagraph (B) of paragraph (3) of subdivision (c) as it appears that the word “after” is missing following “position/classification” in the second line.

Proposed Response:

In response to the suggested amendments:

- CalPERS is rejecting the suggestion to change the tense for the word “served” from past tense to present tense. The tense for the word is appropriate.
- CalPERS is rejecting the format change of removing (i) in subparagraph (B) of paragraph (3) of subdivision (a) and subparagraph (C) of paragraph (6) of subdivision (a). The format structure is consistent with Government Code section 7522.56(f)(2).
- CalPERS is rejecting the suggestion to change “certifies” to “certify” to align with “Trustees.” The verbiage is consistent with Government Code section 7522.56(f)(2)(C).
- CalPERS is rejecting the grammar suggestion in subparagraph (ii) of subparagraph (A) of paragraph (6) of subdivision (a). The opening line is stating what the second exemption option is as a continuation of subparagraph (A) and is not a fragment. Subparagraph (ii) further clarifies when the exemption starts, that the exemption can be requested more than once, what is required to request the exemption more than once, and the deadline for submitting a request for a subsequent exemption.
- CalPERS is accepting the suggestion to divide the content in paragraph (8) of subdivision (a) into two subparagraphs for clarity.
- CalPERS is accepting in part the suggestion to correct the sentence in subparagraph (B) of paragraph (3) of subdivision (c). CalPERS is changing “returning” to “who returned” following “position/classification” in the second line.

General Opposition

Comment 11:

One commenter stated that the proposed regulation is too restrictive and urged CalPERS to not adopt the proposed regulations and allow local hiring decisions to be made at the local level.

Proposed Response:

A response is not required for general statements of opposition.

General Comment

Comment 16.1:

One commenter stated that the amended language providing clarity to the definition of “limited duration” and establishing an identifiable start date of post-retirement appointments are an improvement from the initial proposed regulatory text.

Proposed Response:

A response is not required for this general comment.

Public Comments Received

This section provides a copy of all of the comments received.



December 16, 2022

Andrew White, Regulation Coordinator
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Submitted via electronic mail to: Regulation_Coordinator@calpers.ca.gov

Comments to revised text of section 574.1 defining "limited duration"

Dear Mr. White:

California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment ("CASE"), the exclusive representative for State Bargaining Unit 2 ("BU2"), offers the following comments to the revised language of the proposed regulation to define and purportedly limit the length of time retired annuitants can continue to work for CalPERS-covered employers after retirement. As will be shown, the proposed regulation suffers from two major flaws. First, it expressly allows retired annuitants to work indefinitely so long as the required certifications are made. Second, it contains no standards for evaluating the reasonableness or legitimacy of the certifications. For these reasons, the proposed regulation must be completely rewritten.

After the first round of public comment, CalPERS revised the proposed regulation in many respects, including adopting language to address some of the concerns in CASE's letter of August 1, 2022. However, there are two problems with the revised language, each of which is addressed below.

1. The Definition of "Limited Duration" is Effectively Unlimited

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The revised language provides that a person may work as a retired annuitant for 24 consecutive months (§ 574.1(a), after which the appointment may be extended for two 12-month periods (§ 574.1(a)(3).) With regard to State employees, the extensions are authorized so long as CalHR "certifies by memorandum" seven items. (§ 574.1(a)(3)(B), cross-referencing § 574.1(a)(3)(A)(i) through (vii).) Thus, CalHR has the unilateral authority to double the initial 24-month appointment by granting two 12-month extensions.

After that 48-month period, the employer may then request an exemption which would authorize an additional 12-month extension. (§ 574.1(a)(6)(A)(ii).) To qualify for this exemption, CalHR must again "certify by memorandum" eight items. (§ 574.1(a)(6)(C), cross-referencing § 574.1(a)(6)(B)(i) through (viii).) Even worse, almost all of the eight items are virtually identical to the seven items required to get the initial extension. Thus, successfully obtaining an extension all but guarantees that an employer will also qualify for an exemption, as most of the certification requirements will have previously been satisfied.

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The regulation specifically states that an employer “may request this exemption more than once.” (§ 574.1(a)(6)(A)(ii). There is no upper limit on the number of times this exemption may be sought, and as long as CalHR keeps issuing the certifications, CalPERS has no discretion, as the regulation specifies that “the board *will* grant one of the exemptions . . . if the applicable conditions in this subparagraph and subparagraph (C) below are met.” (§ 574.1(a)(6)(B). In other words, CalHR can turn an appointment of “limited duration” into an unlimited period of time, simply by repeatedly issuing the required certifications, and CalPERS would have no option other than to continue granting endless 12-month exemptions. Thus, on its face, the regulation that purports to define “limited duration” expressly contemplates a procedure to allow retired annuitants to work indefinitely. This obviously turns the statutory phrase “limited duration” on its head and the regulation, if adopted, would plainly be subject to legal challenge as being ultra vires.

This is so because all three statutory mentions of the phrase “limited duration” are paired directly with the phrase “either during an emergency to prevent stoppage of public business.” (Govt. Code §§ 7522.56, 21224, subd. (a), 21229, subd. (a).) In other words, there are only two contexts in which a retired person may work for a public employer without reinstatement or loss of benefits. The first one is during an emergency, and not just any kind of emergency. Rather, it must be the kind of emergency that threatens to stop public business. The second situation is when the person “has skills needed to perform work of limited duration.” Barring one of these condition precedents, retired persons are not permitted to work without reinstatement or loss of benefits. Accordingly, these two situations are properly viewed as very limited exceptions to the general rule.

In addition, Government Code section 19144 expressly references section 21224 and 21229 and notes that “a person who has retired from state civil service may be employed temporarily in a civil service position” Thus, whether working during an emergency, or for a limited duration, the period of employment is statutorily required to be “temporary.” In ascertaining the meaning of words in a statute, it is a customary canon of statutory construction to consult the dictionary definitions of the words used by the Legislature. (*People v. Santos* (2020) 53 Cal. App. 5th 467, 473.) According to dictionary.com, the definition of “temporary” is “lasting, existing, serving, or effective for a time only; not permanent.”¹

Other statutory instances of the phrase “limited duration” have a very narrowly defined time period. For example, Insurance Code section 12671, subdivision (e)(8) defines short-term limited duration health insurance as a policy that expires in less than 12 months from the effective date. Insurance Code section 10144.55 defines short-term limited duration disability income insurance as two years or less. Business and Professions Code section 8024.1 authorizes the issuance of a shorthand reporter certificate for a “limited duration” not to exceed 45 days. Perhaps most relevant, Government Code section 18531 defines an emergency civil service appointment as an appointment not to exceed 60 days due to the limited duration of the work. All of these provisions indicate that when the Legislature uses the phrase “limited duration” in a statute, it means something far less than the unlimited duration contemplated by the instant regulation.

Accordingly, the phrase “limited duration” must be interpreted to mean a short period of time, something far short of permanent, for a length of time akin to the duration of an emergency. The revised regulation, however, expressly authorizes unlimited, indefinite employment of retired annuitants via the simple artifice of CalHR issuing certification memos.

It may be argued that CalHR (or any other CalPERS-covered employer) would never game the system by issuing unwarranted certifications to allow a retired annuitant to keep working

¹ See <https://www.dictionary.com/browse/temporary>

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indefinitely. But the entire purpose of enacting laws and regulations (like the instant regulation) is to carefully proscribe the authority of the governmental entity, limit its power, and channel whatever discretion is delegated to it.

The State benefits from the employment of retired annuitants in several ways. First, because the retired annuitant has by definition already retired and has begun collecting their pension earned through State employment, the State no longer has to pay the employer's contribution to CalPERS. Second, health insurance coverage for retired annuitants is generally paid for, sometimes as much as 100%, such that the employer of the retired annuitant no longer has to contribute to the retired annuitant's monthly allowance for health coverage. In addition, the state benefits from the savings related to a variety of other payroll taxes and employer contributions that are not necessary for retired annuitants. Thus, there is a very real financial incentive for the state to use retired annuitants for as long as possible, rather than hire more expensive permanent, full-time rank-and-file civil service employees. And that incentive is the very reason that it is foreseeable that employers will indeed issue certifications that are unwarranted, simply to save money.

This regulation, as revised, gives CalHR (and other CalPERS-covered employers) virtually unlimited discretion to issue mere certifications in order to bypass the supposed limit on the period of time retired annuitants can be employed. Merely hoping that CalHR (or another entity) will not issue certifications indefinitely is wholly insufficient. Since the regulation contains no penalty for issuing fraudulent or unwarranted certifications, there may as well be no regulation at all. The regulation, as revised, merely sets up a procedural bureaucracy in which retired annuitants can work indefinitely so long as CalHR checks the boxes on a certification memo.

2. The Regulation Contains No Standards for Assessing the Validity of the Certifications Required for the Extensions and Exemptions

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In order to grant the two, 12-month extensions, the revised regulation requires CalPERS to certify seven items, as follows:

- (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.

(See § 574.1(a)(3)(B), cross-referencing § 574.1(a)(3)(A)(i) through (vii). However, the revised regulation contains no standard to allow CalHR to determine whether a certification is warranted. While items (i) and (ii) are admittedly not subject to much reasonable debate,² the other five items are hopelessly vague in the absence of any standards.

For example, with respect to item (iii), how will CalHR (or anyone else) know if the "reason" is sufficient? Is it enough to simply state that it would be time consuming to hire a permanent, full-time civil service employee to do the work? The language as written certainly does not require

² Presumably, the position title will be obvious as it is the subject of the exemption request, and a duty statement will already be on file with respect to the position.

any particular *quality* of reason, nor does it allow CalHR or anyone else to evaluate whether a reason is good enough. In short, any reason would be sufficient.

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The same is true for item (iv). The reason the duties cannot be performed by non-retired employees could be as simple as “there are no current non-retired employees who know how to do this work.” That reason may or may not be true in a given circumstance, but the regulation offers no standard upon which to test that assertion or deem it insufficient. Thus, any reason given will be sufficient to make the certification.

Item (v) requires there to be a plan in place to transition the duties performed by the retired annuitant to a non-retired employee or other retired person. However, there is no standard for assessing the quality of such plan. As written, it would apparently be sufficient for the employer to simply say “we plan to transition the duties.” The language affords CalHR no opportunity to validate the quality of the plan, the level of detail in the plan, or the likelihood that the plan will be followed and successfully implemented.

Likewise for item (vi), the anticipated end date of the extension. Any date will be sufficient, even if that date is entirely unrealistic, because there are no standards by which CalHR can assess the date. In fact, the anticipated end date could even be beyond the 12-months sought for the extension, and CalHR would have to accept it.

Finally, item (vii) best illustrates the absurdity of having absolutely no standards, as CalHR must certify its approval of the extension. When should approval be granted or denied? According to what standards? The regulation is silent on these questions. As such, there is absolutely no way to evaluate whether the certifications were made appropriately or even in good faith.

Under the revised language, CalHR can simply accept representations of a state department with no independent investigation or verification. Or, more accurately, CalHR *must* accept the representations of state departments seeking an extension, because the regulation contains no standards upon which CalHR can reject them.

The same deficiency exists for the eight items subject to certification to authorize an exemption. The CalPERS Board “will grant” the exemption so long as CalHR certifies:

- (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.

(See § 574.1(a)(6)(C), cross-referencing § 574.1(a)(6)(B)(i) through (viii). Most of these are identical to the seven items subject to certification for an extension. Those few that are different,

however, further exemplify the problem with having no standards upon which to measure the items subject to certification.

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Item (iv) is slightly different than § 574.1(a)(3)(A)(iv) in that it contemplates the duties being performed by both non-retired employees or another retired person, rather than solely non-retired employees. This difference is odd because if the purpose is to limit the use of retired annuitants, allowing the duties to be transferred to another retired employee seems counterproductive. But more importantly, the reason offered can be a good reason or a bad reason, and CalHR will have no criteria upon which to accept or reject the reason. Thus, a simple statement that there are no other employees (or retired persons) able to do the work would apparently be a sufficient reason.

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Item (v) is a variation on § 574.1(a)(3)(A)(v) in that the latter requires a plan and the former now requires a reason the plan failed or could not be implemented. Here again, it would apparently be sufficient to simply state "We never got around to hiring anyone to replace the retired annuitant." The lack of any criteria makes this absurdly insufficient reason acceptable, especially since CalHR has no authority to reject even the flimsiest of reasons.

Finally, item (vi) is the only truly new criterion, and requires that there either have been a completed recruitment that nevertheless was not able to fill the position, or a reason that such recruitment cannot be completed. But it would apparently be sufficient to simply state "Budgetary constraints prevented us from hiring any new positions." Or, to illustrate the point with an even more absurd example, "We conducted a recruitment and received no acceptable applicants or candidates." The lack of any standards in the regulations means the foregoing "reasons" or any others would be deemed sufficient. Indeed, on what grounds could CalHR, or the CalPERS Board, find any such reasons insufficient?

Since CalHR will have already certified most of the eight items in the course of granting the extension, the certification required for the exemption will simply be a rubber stamp repeat (albeit with one truly new finding to be certified regarding the recruitment) of the prior extension process. And CalPERS will be required to accept the certifications, however baseless they are, as the rule states expressly that the Board "will grant" the exemption so long as CalHR provides the required certifications. Thus, not only are there no standards guiding CalHR in making the certifications, but CalPERS has no discretion to impose its own standards for evaluating the certifications.

Not only are there no standards by which to evaluate any of the certifications, there is no process for anyone to challenge the legitimacy or reliability of any of the standards. For example, suppose a union representing the bargaining unit to which the position is assigned had concrete documentary evidence that one or more of its own members could perform the duties being assigned to the retired annuitant, such that the certification on that point was manifestly false. To whom would the union present that evidence? There is no forum specified in the regulation that is empowered to accept and consider such evidence, and no procedure for adjudicating that dispute.

What emerges from the foregoing is that the various certifications required to indefinitely extend an appointment are not subject to challenge or even third-party evaluation. All that is required is for CalHR to make the certifications, and once made, the certifications can never be questioned.

3. The Better Course Is to Simply Impose a Hard-Cap with Strictly Limited Extensions

3

CASE previously recommended strengthening the certification process by requiring them to be made under penalty of perjury. Staff recommended rejecting that proposal because the employer would have to make the certifications via resolution at a public meeting, which was determined to

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be a sufficient “balance between administrative burden and rigor.”³ CASE also previously suggested that employers should be required to provide a copy of the exemption request to the applicable bargaining unit. This suggestion was rejected by staff because CalHR “is responsible for establishing a process for certifying its review and approval of the exemption request.”⁴

Rather than reiterate prior suggestions, CASE has determined that it is impossible to fix such a broken regulation. Moreover, rather than suggest standards for evaluating the various certifications, and suggesting procedures to be employed for challenging and evaluating those certifications, CASE has determined the better process is to simply establish a hard cap on the use of retired annuitants which allows, in some cases, for a brief extension.

Accordingly, CASE proposes the entire regulation be replaced with the following language.

§ 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 twelve consecutive months, beginning on the first day of the appointment, and ending after twelve calendar months have elapsed, regardless of the number of hours worked by the retired annuitant during any of the twelve months.
- (b) An appointment may be extended one time, for a period of up to twelve months, if all of the following are satisfied:
 - (1) The CalPERS-covered employer submits a written request to CalPERS for an extension;
 - (2) The request contains an explanation as to why the extension is necessary, and any supporting documentation justifying the request;
 - (3) A copy of the request is served on the exclusive representative of the bargaining unit to which the position in question is assigned;
 - (4) The CalPERS Board makes a finding in a public meeting, after hearing public comment on the request, that the request is reasonable and supported by the facts and circumstances.

This rule is simple, easy to understand, and most importantly, does not suffer from any of the fatal flaws described above. Moreover, it does justice to the statutory phrase “limited duration” by truly placing a reasonable limit on the use of retired annuitants.

Thank you for your consideration in this matter.

Sincerely,



Patrick Whalen
CASE General Counsel

³ This requirement of a public meeting does not apply to CalHR, and thus the basis for rejecting the prior suggestion was improper.

⁴ This is blatantly untrue. The revised regulation contains no direction to CalHR to establish a process, and in any even it is doubtful whether one state department (CalPERS) could direct another state department (CalHR) to promulgate regulations via its own regulation. Such a mandate would require legislation.

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Comment 2

Business Services

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Andrew White, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento CA 94229-2720

Re: Proposed Regulations defining Limited Duration Employment

Mr. White

During this comment period, I would like to notate the impact that an automatic clock regardless of months or hours within a twenty-four-month period will have upon the education community. Our industry, like many others, is being highly impacted by the baby boomers retiring, and the candidate pool being scarce, unprepared, and requiring more time and training due to the demanding mandates that continue to increase and press upon staff. In a time where ANY employee is hard to find, the retiree who can provide a few hours, days or months during a critical period has been desperately needed to sustain.

If only life were what it once was, where staff dedicated 40+ hours to a job, trained, learned, and RETAINED in their employment. However, we have not or do not currently see that taking place in the past two plus years. Currently in our county we have approximately one-third of all chief financial officers new to the business and several whose districts have had to replace non-successful candidates more than once in the past two years. Unfortunately, the turnover of payroll and retirement staff in education is even more dire as the complexity, skill and time demands continue to cause vacancies and turnover. Yet, law demands, as well as humanitarian believe, that an employee worked should be paid timely and accurately.

While I believe there should be a limited duration, I would plea that the current method of total hours that a retiree can work per year, provided for that same limited duration.

Thank you for your consideration of not implementing the proposed language of limited duration.

Sincerely,



Theresa Cooper
Director II, Payroll & Retirement Compliance



SHIRLEY N. WEBER, PH.D.
CALIFORNIA SECRETARY OF STATE

December 16, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

RE: Proposed adoption of section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR).

Dear Mr. White,

On behalf of the California Secretary of State (SOS), thank you for the opportunity to provide feedback on the proposed rulemaking action that includes defining "limited duration" "as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer."

The Secretary of State's Office utilizes Retired Annuitants in many of our divisions to assist with statewide elections, business filings, campaign finance, Agency support, and more. Retired Annuitants are a beneficial resource to this Agency, allowing for consistent temporary assistance to ensure trusted resources like the Voter Hotline remain available for California's electorate.

The SOS has successfully utilized Retired Annuitants under the current definition of "limited duration", allowing a retired person to temporarily be employed for up to 960 hours per fiscal year. The proposal of defining "limited duration" as a limit of 24 consecutive months per appointment of a retired person in the employ of a CalPERS-covered employer will significantly restrict the SOS from maintaining a consistent and knowledgeable retired workforce. Although there are Statewide efforts to maintain a skilled workforce through succession and workforce planning, the SOS along with so many other state entities, is experiencing significant impacts related to employee retention, resulting in a loss of knowledge, skills and experiences. This loss is typically resolved through the availability of well trained and skilled Retired Annuitant talent. In addition to retention challenges, the last few years have proven to be difficult to attract a new workforce to the state. The effort of recruitment has become more strained due competing opportunities that candidates have outside of the state. The SOS is responsible for critical services with significant statewide impact; therefore, the temporary

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but ongoing use of Retired Annuitants provides assistance to maintain continuity when challenges of recruitment, knowledge base loss and retention is experienced.

The SOS's experience with retired persons has shown benefits through special projects including the administration of statewide elections. The SOS Elections Division utilizes and supports the use of Retired Annuitants to assist with increased workload leading up to, and through, each election, allowing for much needed temporary assistance to successfully administer safe, secure, and transparent elections. Identifying and maintaining quality retired personnel over recent years has been challenging. The SOS has found success in re-hiring familiar retired help which not only reduces training cost and time for recurring projects, like our Voter Hotline, but also builds institutional knowledge, benefiting our constituents. The SOS and county election officials throughout the state bring on additional temporary help each election to assist with a wide variety of tasks. While bringing on temporary help provides a great resource, having retired persons with enhanced skill sets return for each election protects the critical infrastructure and integrity of elections throughout the state.

Due to these concerns and the risks presented by restricting the use of retired help, we join the California Association of Clerks and Election Officials in the continued use of retired persons and request that the regulations not modify the "limited duration" definition.

Thank you for the opportunity to provide comments on this proposed rulemaking action. You are welcome to contact the following directly with any questions about these comments:

Lisa Martin, Chief Deputy, Secretary of State (916) 695 1638
Maria Walton, Chief, Management Services Division (916) 695-1514

Respectfully



Shirley N. Weber, Ph.D.
California Secretary of State



Dane Hutchings
dhutchings@publicpolicygroup.com
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December 16, 2022

Via E-mail and U.S. Mail

Regulation_Coordinator@calpers.ca.gov

Andrew White
Regulation Coordinator, California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720

Re: 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

To whoever it may concern:

This letter is submitted on behalf of the City of Mountain View ("City" or "Mountain View") regarding the 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 ("Proposed Regulation").¹ The City provided comment on the Proposed Regulation prior to its most recent revision, identifying a series of regulatory features that would curtail the City's ability to adjust its staffing to meet critical municipal needs. CalPERS' subsequent revisions addressed only some of the City's primary concerns. The Proposed Regulation remains far too stringent, especially considering the novel staffing challenges that the City recognized in its initial comment letter.

Mountain View urges CalPERS to dismiss or substantially revise the Proposed Regulation. First and foremost, the City believes that existing regulations are sufficient to satisfy the Proposed Regulation's purposes. But even if CalPERS is compelled to clarify the scope of "limited duration" employment under the Government Code, a less restrictive time limitation should apply by default, with an option for non-consecutive extensions. Finally, if CalPERS will not loosen the proposed restrictions on all retired annuitant appointments, it should at least loosen restrictions on retired annuitants who perform especially limited hourly work.

The existing regulations are sufficient to satisfy the Proposed Regulation's purposes and are consistent with regulations in parallel retirement systems. Two factors already limit retired annuitant appointments: the 180-day waiting period² and the 960 annual working hour limitation.³ The waiting period ensures that organizations plan to meet future operational needs without the retiree, authorizing immediate reliance upon them only in limited

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¹ The comments and recommendations regarding the Proposed Regulation set forth in this letter represent the views of Mountain View only. They do not represent the official position of Renne Public Policy Group.

² See Gov. Code § 7522.56(f).

³ *Id.* § 7522.56(d).



circumstances.⁴ Furthermore, just like the income limits for Social Security benefits deductions,⁵ 1, con't
the 960-hour limitation prevents retirees from receiving a windfall by unduly multiplying sources
of income. The 960-hour limitation also ensures that work performed by a retired annuitant is
distinct from full-time work and is not relied upon in lieu of filling staffing vacancies or adding
contributory full-time staff. Accordingly, the existing regulations are sufficiently limiting, and
CalPERS should dismiss the Proposed Regulation.

Alternatively, CalPERS should adopt less restrictive time limitations, allowing 2
retired annuitant appointments that default to 48 months or more with optional, non-
consecutive extensions. According to CalPERS' own data, the Proposed Regulation could
prematurely end over *half* of all retired annuitant appointments at public agencies like Mountain
View.⁶ In contrast, three quarters of retired annuitant appointments conclude after 48 months.⁷
Extending the default time limitation for retired annuitant appointments to 48 months or more
would ensure that this critical staffing tool remains in reach for most appointments without the
administrative burden of certification.

For similar reasons, CalPERS should replace the “rolling clock” with the option to certify 3
non-consecutive, 12-month appointment extensions. The Proposed Regulation provides that
appointment extensions beyond 24 months start directly after the previous appointment period
and end 12 months later, regardless of when the employer certifies an appointment extension.
This promises to cut short appointments otherwise certified in accordance with the Proposed
Regulation. For example, if an employer finds that it needs to extend a retired annuitant
appointment eight months after the initial 24-month period concludes, the ensuing extension
would only be valid for four months. This limitation is unnecessary and poorly tailored to the
unpredictability of municipal staffing needs. CalPERS should instead provide that extensions can
be non-consecutive, such that an employer can certify a 12-month extension months after the
initial appointment period concludes and still benefit from a full year appointment.

At a minimum, CalPERS should provide an exception to the Proposed Regulation's 4
limitations for retired annuitants who perform especially limited hourly work. The City
generally hires retired annuitants to perform only limited hourly work to fill minor and
sometimes unexpected gaps in various municipal departments—even those that are fully staffed.
CalPERS should authorize employers to hire retirees on this limited basis at will, without
performing the certification processes set out in the Proposed Regulation. The Proposed
Regulation already authorizes employers to request an exemption to the 48-month limitation if
certain conditions are met, potentially allowing employers to rehire retirees to perform 120 hours

⁴ *Id.* §§ 7522.56(f)(1)–(4).

⁵ See generally Social Security Administration, Receiving Benefits While Working, <https://www.ssa.gov/benefits/retirement/planner/whileworking.html#:~:text=If%20you%20will%20reach%20full,an d%20still%20receive%20your%20benefits>.

⁶ CalPERS Pension & Health Benefits Committee Meeting Agenda, Agenda Item 6a (Apr. 18, 2022), available at https://www.calpers.ca.gov/docs/board-agendas/202204/pension/item-6a_a.pdf (showing that between fiscal year 2009–10 through fiscal year 2018–19, 53% of retired annuitants concluded their appointment within 24 months).

⁷ *Ibid.* (showing that between fiscal year 2009–10 through fiscal year 2018–19, 75% of retired annuitants concluded their appointment within 48 months).



of work per fiscal year on an ongoing basis. It makes little sense to force employers to undergo the administrative burden of three separate certification processes (one at 24 months, another at 36 months, and a final one at 48 months) for employees who perform such limited work. After all, employees who perform such limited work earn little, and an employer cannot rely on that limited work in lieu of filling staffing vacancies or adding contributory full-time staff.

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Despite CalPERS' recent revisions, the Proposed Regulation would still impose unworkable constraints on Mountain View at a time when municipal flexibility is more important than ever. While the City firmly believes that CalPERS should leave the retired annuitant regulations unchanged, the minor revisions outlined above would at least mitigate the most damaging of the Proposed Regulation's sweeping impacts.

Thank you for your consideration. Please do not hesitate to contact me if I can answer any questions about the subject of this letter.

Sincerely,



Dane Hutchings
Managing Director, Renne Public Policy Group

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December 16, 2022

VIA EMAIL ONLY TO: REGULATION_COORDINATOR@CALPERS.CA.GOV

Andrew White, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720

Re: Revisions of the Proposed Regulation Defining "Limited Duration"

Dear Mr. White:

This correspondence is being sent in response to CalPERS' second request for public comments concerning proposed regulation Title 2 California Code of Regulations ("CCR") §574.1 defining "limited duration" for the purposes of retired annuitant ("RA") appointments under California Government ("Gov.") Code¹ §§21224 and 7522.56, as well as temporary upgrade pay ("TUP") appointments under 2 CCR §571.

As mentioned in our last public comment letter, I am a partner with Best, Best & Krieger, a law firm that represents many public employers who contract with CalPERS. We appreciate this additional opportunity to provide analysis and respond to the revised proposed regulation from an external perspective.

We appreciate that CalPERS staff have made substantive changes to the proposed regulation in response to the first round of comments that decrease the administrative burden on public employers added with the proposed regulation, protect the interests of members in collective bargaining groups, and increase transparency. However, the revised language continues to significantly expand the complexity inherent in complying with RA appointments and still substantially limits post-retirement employment opportunities for many retirees.

While we understand CalPERS' interest in reducing reliance on retirees such that opportunities are created for active members, the extra help retired annuitant rules under Section 21224 were created to provide contracting agencies with critical flexibility in addressing holes in

¹ Undesignated statutory references are to the California Government Code, unless otherwise noted.



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December 16, 2022
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their workforce, particularly when experiencing budgetary challenges. As such, we ask that you continue balancing these interests carefully.

For example, the term “limited duration” can be defined without significantly restricting the post-retirement employment opportunities of retirees by allowing similar and/or overlapping duties between appointments *which are not consecutive*, and decrease complexity by providing additional clarification within the proposed regulation. This is consistent with CalPERS’ required consideration of alternatives that are “as effective as, and less burdensome to affected private persons than the proposed action” and “more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law” under Section 11346(a)(13).

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Complexity of Overlapping Duties in RA Appointments for the Same Employer

As explained in our previous response letter (**Exhibit A**), and references therein, the proposed regulation drastically decreases the post-retirement employment opportunities of retirees, and the flexibility of contracting agencies using retirees who possess specialized skills. The revised regulation still results in the same outcome, by stating the following:

“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.”²

While the revisions provide clarity to CalPERS’ previous position that “the definition of appointment is necessary to ensure that a retired person serves no more than once in an appointment of limited duration under the statute that involves specific duties for that particular employer”³, it continues to further constrain employment options for retirees beyond simply defining “limited duration” for individual appointments. Instead of RA appointments for the same employer having “substantially different” duties, they must now have no overlap whatsoever and

² See Proposed Regulation §CCR 574.1(a)(8)

³ See CalPERS’ Proposed Response in the “Clarification of ‘Substantially Different’ for Post-Retirement Appointment” section of Agenda Item 5a, Attachment 3a, Page 6 of 147 provided during the CalPERS Board of Administration’s Pension & Health Committee meeting of November 15, 2022 located here: https://www.calpers.ca.gov/docs/board-agendas/202211/pension/item-5a-attach-3_a_a.pdf (“Nov. 15 Proposed Responses”)





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are limited to beginning an RA appointment only once in retirement during a single 36-month consecutive period. 1, con't

As discussed more in the section below detailing comments on extensions and exemptions, the first and second 12-month extensions under 2 CCR 574.1(a)(3) cannot be retroactively approved by an employer outside of the consecutive 24-month period following the initial appointment, i.e. the 25th through 48th month following the initial appointment start date. Combined with the requirement under 2 CCR 574.1(a)(6) that exemption requests must be received by CalPERS within the consecutive 12-month period following the initial consecutive 48-month period, this means that retirees cannot work in an RA appointment for an employer and then start another RA appointment with similar duties at the same employer outside of a consecutive 60-month window.

There are situations revolving around legacy IT infrastructure, contracts, investigations, and legal analyses where it may be incredibly difficult, unnecessarily financially burdensome, or impossible to successfully transfer duties and knowledge required for an RA appointment to an employee or other retiree.⁴ In some situations, the requirement to do so would be so difficult that it outweighs the benefit of bringing on the retiree in the first place, and ultimately removing flexibility from the employer. For example, specific holistic institutional knowledge of an agency in Human Resources, Energy, or a specific subject matter area. In such situations employers need to retain the flexibility to bring on a retiree with specialized skills that worked for an employer, where the retiree is brought on for multiple “appointments” with overlapping duties at the same employer, of less than 2-months and the start of the second appointment may not be within the required window now created by the proposed regulation.

Because of the language prohibiting overlapping duties between RA appointments at the same employer and the implications of extension and exemption requirements, a retiree could not utilize their specialized skills for a limited duration, and then come back 5 years later to work in an RA appointment of limited duration performing similar work. *This would result in increasing costs for a public employer, and by extension taxpayers, in situations where there was never the need nor option to make a permanent position, and where the work would have never resulted in potential contributions to CalPERS.*

Moreover, this still limits many retirees from utilizing their specialized skills at a single employer over multiple RA appointments where their initial appointment within the 60-month window isn't extended indefinitely. Unfortunately, this also now applies to the “perpetual” exemption request of less than 120 hours per Fiscal Year that was included in the initial proposed regulation. Even if an RA appointment would result in less than 120 hours per Fiscal Year, if the

⁴ See §CCR 574.1(a)(3)(A)(v)





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employer doesn't request to continue the appointment during that 60-month window, a retiree won't be able to come back to the employer and perform overlapping duties. 1, con't

To clarify, we're not suggesting that RA appointments in excess of 60 consecutive months should not have the same level of scrutiny, simply that there should be middle ground between limiting RA appointments where every consecutive month is actually worked and relying on retirees in certain situations multiple times during their retirement. In order to accomplish this, the proposed language should be further revised to state that the "overlapping duty" language only applies to appointments where there is a gap of 12 months or less between two RA appointments, and that all subsequent RA appointments are limited to a consecutive 24-month period outright. This places the necessary emphasis and proposed requirements on the initial appointment, which applies to most RA appointments, while still accounting for unique situations where the only and best option for an employer is to bring back a retiree for similar work a year or more after completing an initial RA appointment.

Further, this aligns with the legislative intent surrounding Section 21224. To reiterate our previous assertions, the legislative intent behind RA appointments was to allow retirees employment opportunities in retirement while preventing "double-dipping" or receiving a full-time paycheck and their pension. The last salient legislative action, which was consistent with past legislative action in this regard, was to increase the working hours in a single fiscal year from 720 to 960 under AB 1937 and AB 2363 in 1989. While AB 1937 focused on only increasing the hours from 720 to 960, AB 2363 sought to increase the hours by the same amount, implement ongoing post-retirement employment education for retirees and modifying the partial retirement program. The author of AB 1937 opined that "existing post retirement employment limitations are too restrictive" (**Exhibit B**). To clarify, this mean that appointments of "limited duration" with less than 720 hours per Fiscal Year, with no limitation on the *number of appointments*, was insufficient, and the impetus for increasing the hours allowed per Fiscal Year. The legislation did not address the number of "limited duration" appointments a retiree could work performing similar work for the same employer during their retirement. So while the legislation focused on increasing the number of hours per Fiscal Year, it did so in the context that retirees would still be able to perform multiple RA appointments of "limited duration," including those with overlapping duties for the same employer. This is why retirees would not have the same post-retirement employment opportunities under the proposed regulation as they currently have under the law.

We understand and agree that a definition of "limited duration" is necessary for transparency, decreasing the complexity of meeting compliance requirements, and to allow active and prospective members employment opportunities. We are not arguing that CalPERS should continue to allow seemingly perpetual RA appointments as long as they remain under 960 hours per Fiscal Year. We are, however, pointing out that there needs to be an included exception for





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employers and retirees in order to allow “limited duration” appointments by the same retiree, performing similar work, at the same employer. For that reason, we have provided suggestions below to address this issue which still allow the proposed regulation to achieve its intended goal.

Beyond those suggestions, though, there also needs to be clarification provided concerning overlapping duties under 2 CCR 574.1(a)(8) in the same way that was necessary for work that is “substantially different.” For example, does this refer to specific individual duties and projects assigned to RAs, or would it be broadly interpreted?

2

Imagine a situation where an RA that has specialized skills in contracts and negotiations that was initially brought on to “negotiate contracts” in reference to revitalizing business in a particular area of a city. If that same RA is brought on by the same employer for another RA appointment due to their specialized skills to “negotiate contracts” but in reference to assisting with negotiating a labor contract, would those be overlapping duties because both appointments specified a duty to “negotiate contracts?” Would this be different if the identified duty specified that the original appointment referred to business contracts and the second appointment dealt with a labor contract? Similarly, if the first appointment was to “negotiate the 2024-2027 City Employees MOU” and the second appointment was to “negotiate the 2028-2031 City Fire MOU,” would those be overlapping duties? In the last example, the skills used would be the same, but the specific duties and projects assigned would not actually overlap, and therein lies additional complexity.

Suggested Revisions:

1. Provide an exception to the overlapping duty requirement in 2 CCR 574.1(a)(8) by adding 2 CCR 574.1(a)(8)(A) stating “Notwithstanding paragraph (8) above, a retiree whose post-retirement position is subject to this regulation, under which some or all duties overlap with the duties of another post-retirement position with the same CalPERS-covered public employer, begins 12 or more months after the end date of the prior post-retirement position subject to this regulation shall be considered a new ‘appointment.’ Such appointment is not subject to paragraphs (3),(4), (6), or (7) above and the 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.”

3

OR

2. Provide an exception to the overlapping duty requirement in §CCR 574.1(a)(8) by adding 2 CCR 574.1(a)(8)(A) stating “Notwithstanding paragraph (8) above, a retiree whose post-retirement position is subject to this regulation and limited to a





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single consecutive 24-month period shall not be subject to paragraphs (3),(4), (6), or (7) above, and may accept a post-retirement appointment position with the same CalPERS-covered public employer, regardless of the duties of the subsequent appointment, as long as there remains a 12 or more month period between the first post-retirement appointment with the CalPERS-covered public employer and the second post-retirement appointment with the same CalPERS-covered public employer. The 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 for the first and any subsequent appointments as described.”

3, con't

AND

1. Revise 2 CCR 574.1(a)(3)(A)(v) to allow for situations where a transfer of knowledge is impractical by stating “that a plan is in place to transition the duties under subparagraph (ii) above to non-retired employees or another retired person, or the reason that such a plan cannot be implemented.”

Continued Imposition of Extensions and Exemptions Administrative Burden

4

CalPERS rejected initial comments to lessen the administrative burden to employers regarding the removal of required information for extensions and exemptions to be approved by an employer’s governing body. This appeared to be for both transparency and to assist employers adequately meet other requirements of the proposed regulation, such as appointment duties not overlapping, and providing CalPERS with anticipated end dates. However, this still results in added administrative burdens to employers in requiring approval for extension requests.

While most retired annuitant appointments do end before a 24-month consecutive period, those statistics shared by CalPERS were also in the context of prior statutes and regulations, where there was no limitation on overlapping duties between appointments from the same RA at the same employer. Many individual appointments do end within 24-months, but those same retirees are also brought back by the same employer if their specialized skills are needed again, in an appointment of limited duration under the 960-hour threshold. In my experience it’s very common for those appointments to require duties that *would not and could not* otherwise be given to an active employee or position, and begin only due to that fact that a unique relationship between the retiree and employer can benefit both parties.

Because of the overlapping duty requirement, this means there may be far more emphasis on employers trying to extend a single appointment, so they don’t risk losing valuable skills that only reside with a specific retiree. Doing so, and waiting until after the “window” to extend the





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appointment would mean the employer is not able to utilize those skills, which is loss for both the employer and the public that it serves. Meaning that this ultimately results in not just the administrative burden related to appointments that may persist beyond a 24-month consecutive period, but also latent administrative duties for many more RA appointments. If the suggestions in the section above are utilized, this would result in far less of an administrative burden for employers.

Limited Duration Defined by Collective Bargaining Agreement

5

The addition of language referencing RA appointments of limited duration, as defined in a collective bargaining agreement under the revised 2 CCR 574.1(b) warrants additional clarification, and is inconsistent by focusing only on language inside of a collective bargaining agreement.

Subdivision (b)(4) states the following:

“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.**” (emphasis added)

Here, a plain reading of the language shows that “regulation,” is used to reference 2 CCR 574.1 as a whole, meaning that any RA appointment under subdivision (b) would be ineligible for any subsequent RA appointment with the same employer under either subdivision (a) or (b). However, this is inconsistent with 2 CCR 574.1(b) specifying that subdivision (a) “shall not apply to the CalPERS-covered public employer and retired person subject to that collective bargaining agreement.”⁵ Not being subject to subdivision (a) is conditioned upon a specific retiree and specific bargaining unit. If an employer had multiple collective bargaining agreements, whether “limited duration” was defined identically or not, 2 CCR 574.1(b)(4) prevents that retiree from entering an RA appointment at the same employer relevant to *any collective bargaining agreement*, thereby enforcing the definition in one agreement across any subsequent RA appointments, even if those wouldn’t be subject to the initial collective bargaining agreement. Further, paragraph (b)(4) is also inconsistent with subdivision (a)(8), which does allow subsequent RA appointments at the same employer, as long as there are no overlapping duties.

Therefore, paragraph (b)(4) should reflect a limitation on future RA appointments at the same employer where “limited duration” is defined in a collective bargaining agreement, but only when the post-retirement position or RA appointment is *subject to the same collective bargaining agreement and/or has overlapping duties with the previous post-retirement position.* If 2 CCR

⁵ See §CCR 574.1(b)



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574.1(a)(8) is revised in a manner consistent with the suggestions in the section above, this would allow retirees to use their specialized skills for the same employer in multiple RA appointments, performing similar duties, as long as the appointments were subject to separate collective bargaining agreements that define "limited duration," which is responsive to the public comments from employee bargaining groups. If the suggestions above concerning overlapping duties are not utilized, then paragraph (b)(4) should still be revised to account for situations where a RA would perform a second RA appointment for the same employer, but subject to a different collective bargaining agreement and in a post-retirement position that has no overlapping duties with the first post-retirement position at that employer.

5, con't

Temporary Upgrade Pay

6

The revisions made to paragraph (c) concerning Temporary Upgrade Pay are appreciated and would ensure employees are still allowed to be upgraded into positions that don't immediately follow a permanent appointment.

That being said, the use of "position/classification" in 2 CCR 574.1(c)(3) should be reduced to only "position." The reason for this is that some formal "classifications" are exceedingly broad and cover many positions. In some situations, there may be several open "positions" within the same "classification," such as an administrative "Manager I" where there are several "positions" for an HR Manager, one for a Payroll Manager, etc. The use of "position/classification" here is then unclear and would not allow for a single employee to be, using an example with CalHR classification titles, upgraded into an "Associate Government Program Analyst" role in a subject matter area and then subsequently be upgraded into a "Associate Government Program Analyst" role in a separate area, such as within an Office and Administrative Services unit, without first meeting the requirements in 2 CCR 574.1(c)(3)(A) & (B). This would decrease flexibility for employers in performing necessary operations in situations where a new need arises in a classification with multiple "positions" and there was no preceding permanent appointment.

Conclusion

While we appreciate the significant changes that CalPERS has made to the proposed regulation, the revised proposed regulation will increase the administrative work needed in regard to RA appointments and the complexity of ensure those RA appointments are compliant, even when an individual is familiar with the subject matter. For that reason, and because more substantive changes to decrease the administrative burden this creates and the corresponding complexity have been rejected, the proposed regulation will ultimately result in contracting agencies committing additional resources each time a retiree is appointed under Sections 21224 and 7522.56.





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As such, we urge the CalPERS Board of Administration to not approve the proposed regulation *in its current form*. At a minimum, clarification is necessary, in addition to the removal of provisions substantially limiting the post-retirement employment opportunities of retirees who may perform similar work at the same employer. This would increase transparency, ensure employers and retirees are less likely to incur the steep financial consequences of a noncompliant RA appointment, and fully define “limited duration” for the purposes of clarifying the relevant statutes and eliminate the possibility of perpetual RA appointments that entail work that could otherwise be done by an active employee.

Please contact the undersigned should you need further information.

Sincerely,

A large black rectangular redaction box covering the signature of Isabel C. Safie.

Isabel C. Safie
of BEST BEST & KRIEGER LLP

cc: Henry Jones, CalPERS Board President (via e-mail only)
Marcie Frost, CEO, CalPERS (via e-mail only)
Matthew G. Jacobs, General Counsel, CalPERS (via e-mail only)
Brad Pacheco, DEO, Communications and Stakeholder Relations, CalPERS (via e-mail only)

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August 1, 2022

VIA EMAIL ONLY TO: REGULATION_COORDINATOR@CALPERS.CA.GOV

Andrew White, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720

Re: Comments to Proposed Regulation Defining "Limited Duration"

Dear :

I am a partner with Best, Best & Krieger, a law firm with eight offices throughout California representing over 700 clients consisting of public agencies and school employers who contract with CalPERS to provide pension benefits to employees. My team and I currently represent many of these employers in matters concerning the Public Employees' Retirement Law ("PERL").

This correspondence is being sent on behalf of these clients in response to CalPERS' request for public comment regarding the proposed regulation defining "limited duration" for the purposes of retired annuitant ("RA") appointments under California Government ("Gov.") Code¹ §§21224 and 7522.56, as well as temporary upgrade pay ("TUP") appointments under 2 California Code of Regulations ("CCR") §571. We appreciate the opportunity to provide additional analysis and an external perspective.

After careful deliberation, we conclude that the proposed regulation (**Exhibit A**), will place new adverse limitations on contracting employers beyond just the 24-month limitation, restricting appointments that are currently compliant and last less than 24 months. In addition, the proposed regulation incorporates several implied administrative burdens that complicate RA appointments, which is unnecessarily burdensome on employers.

CalPERS can achieve the same outcome as what's being proposed by simply defining a time-limit of "limited duration," and any related extension request process, without further curtailing the definition of "appointment," requiring a duty statement and additional action by an

¹ Undesignated statutory references are to the California Government Code, unless otherwise noted.



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employer’s governing entity, or the unnecessary implied administrative work that accompanies the proposed regulation. This is consistent with CalPERS’ required consideration of alternatives that are “as effective as, and less burdensome to affected private persons than the proposed action” and “more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law” under Gov. Code Section 11346(a)(13).

“Limited duration” only applies to RA appointments which require “specialized skills needed in performing work of limited duration” (“skill appointments”) under Gov. Code §§21224 and 7522.56. As such, the following discussion will take place solely within that context.

Implied Lifetime Post-Retirement Employment Limitation

The most apparent and drastic implication stems from subsection (a)(1) of the proposed regulation, defining a skill appointment and the inferences made when applying other limitations added throughout the regulation.

Under the proposal, a skill appointment would be defined as follows:

“a position involving work that is **substantially different** from work that the retired person performed after retirement in another position for the same CalPERS-covered employer, or a position for a different CalPERS-covered employer the retired person performed work for after retirement”(emphasis added).

The proposed regulation then imposes a “twenty-four **consecutive** month limit”² for that appointment, which may be extended a number of times “up to twelve **consecutive** months per extension,”³ where “the first day following the end of the initial limit of twenty-four consecutive months or the first extension limit of twelve consecutive months **initiates time counted towards the limit** of twelve consecutive months for the first or second extension, as applicable”⁴ and a retiree “who has served in an appointment for twenty-four consecutive months **must not continue to serve in that appointment until the appointment is extended in accordance with this subdivision**”⁵ (emphasis added).

As discussed in more detail below, the combination of these requirements together has the consequence of enacting new limitations on post-retirement employment. Again, these appointments are in the context of those requiring *specialized skills*. In our experience, it’s more common for civil service employees to perform post-retirement work that corresponds to the

² Proposed California Code of Regulations (“Proposed CCR”) section 574.1(a)(2)

³ Proposed CCR section 574.1(a)(4)

⁴ Proposed CCR section 574.1(a)(5)

⁵ Proposed CCR section 574.1(a)(9)





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experience they gained during their career, and perform that work for public agencies that are located close to where they live, especially employers they worked for during their career. It's also uncommon for a retiree to garner skills that are so broad in application that they apply to multiple types of work that are "substantially different" or are portable enough to be needed by multiple agencies within their geographic area.

From the perspective of a retiree, the proposed regulation is unnecessarily punitive for those that want to utilize their skills to assist a single employer across multiple appointments during their retirement in a way that *already complies with the PERL*, i.e. an appointment under 960 hours per fiscal year for an agency that requires their specialized skills, and is otherwise compliant. While the CalPERS staff report on the proposed action (**Exhibit B**) did not include a discussion of the difference between vacancy RA appointments, emergency RA appointments or skill appointments, the report identified that more than half of all RA appointments already last less than 24-months, with three quarters being less than 48-months, so the overall limitation to length is not at issue here.

The implied constraint in the proposed language has to do with the requirement that further post-retirement employment with the same employer must be for "substantially different" work, which is not currently a requirement. It's reasonable to assume that, at a minimum, this limits retirees to using a specific skill set for an employer once, when connected to the rest of the regulation. Specifically, that a retiree would only be able to work a single skill appointment as a consecutive period, and any subsequent appointment must be at a different employer or for "substantially different" work. Unless future work is "substantially different," this has the result of prohibiting retirees from performing their specialized work in a skill appointment no more than once for a single employer, for the entirety of their retirement.

At this point, it should be noted that much of the intent behind CalPERS' guidelines for retired annuitants stems from the reasonable prevention of retirees "double-dipping" or receiving a pension benefit, and full-time salary or work a schedule that would normally qualify them for CalPERS membership. However, the legislative scheme behind the retired annuitant statutes have generally been broadened over their history, from beginning with Governor appointees in 1955, to a wider application and 30 working days in 1957, then 60 working days in 1969, then 90 working days in 1979, finally culminating in the current threshold of 960 hours in 1989.

In fact, the last time the statute was substantially changed was to increase the working hours in a single fiscal year from 720 to 960 under AB 1937 and AB 2363 in 1989. While AB 1937 focused on only increasing the hours from 720 to 960, AB 2363 sought to increase the hours by the same amount, implement ongoing post-retirement employment education for retirees and modifying the partial retirement program. The author of AB 1937 opined that "existing post retirement employment limitations are too restrictive" (**Exhibit C**).

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As shown on the initial Bill Analysis, CalPERS' staff position was to oppose AB1937. Staff's reasoning was that the threshold increase could entail "possible abuse of post-retirement employment" because the "intent was to allow the employment of trained employees in times of emergency or on special one-time assignments" and was not "to use retirees in place of regular workers." Those comments appear to refer to multiple one-time assignments from the perspective of how an employer uses retirees, with no mention of restricting individual retirees to a single appointment at a single employer for similar work.

The addition of "substantially different" work doesn't provide a disincentive, from an employer's perspective, largely because if it makes practical sense for an employer to use a retiree with special skills for a limited duration appointment, decreasing the pool of available retirees doesn't mean an employer will immediately turn to regular workers. It does, however, mean that individual retirees can't use their specialized skills as much as the current law allows. Moreover, CalPERS' staff report for the proposed regulation implies that retirees were not used for long periods of time in place of regular workers. Again, CalPERS recognizes that most RA appointment last less than 24-months, with the three-quarters lasting less than 48-months.

Ultimately, the CalPERS Board supported AB 2363, including the increase of hours, and adopted a neutral position on AB 1937 (**Exhibit D**). As we now know, both bills were chaptered and RAs were allowed to work up to 960 hours in a single fiscal year. But again, part of the stated legislative intent of the last major change to the statute was to increase the hours because existing limitations were perceived as too restrictive. To go back and restrict the types of appointments, that would otherwise be compliant, is not consistent with past legislative intent.

It is also understood that this issue intersects with the importance of CalPERS' designation as a qualified plan under Section 401(a) of the Internal Revenue Code. However, the proposed regulation only imposes new *limitations*. It stands to reason that if the plan is currently in qualified status in regard to post-retirement employment, then it would continue to be with or without the proposed regulation including the requirement for appointments at the same employer to be for "substantially different" work.

That being said, the type of work that seems the least affected here would be executive or C-suite work that is portable enough to be applicable to many different employers. However, from experience, we have seen that skill appointments are also commonly utilized for specialized work performed by rank and file positions such as investigators, technicians, engineers, analysts, and work that is generally only applicable to public services.

Those retirees without specialized executive experience will see the largest decrease in post-retirement employment options from what is already compliant. While skill appointments are not intended to be a consistent long-term solution for individuals supplementing their

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retirement income, there are many who do perform limited duration work from time-to-time throughout their retirement. At a time when more and more public servants have limited options, and for whom economic pressures due to inflation pose a constant threat, the proposed regulation stands to punish those employees, beyond simply limiting a single skill appointment to 24 or 48 consecutive months.

As a common example, this creates new limitations on executive skill appointments. Take the following hypothetical situation for instance, which is similar to situations we have seen in the past: a previous city manager is retained in a skill appointment a few months after retiring to help bring the newly hired city manager up to speed, because of the institutional knowledge that they possess, which would otherwise be lost to the city (assuming all other criteria are met, such as the 180-day wait period waiver, etc.). The appointment lasts 6 months. Two years after that, the City encounters a significant problem with a contract that took place while the first city manager was employed. Despite the original city manager having specialized skills and knowledge to help the city for a limited duration, they would be unable to work under a skill appointment subjected to the proposed regulation, because the work would not be “substantially different.” As written and because this would be a separate appointment, they could not do so *even if they worked under CalPERS’ presupposed common exception of less than 120 hours per fiscal year.*

There are also many questions that come to mind, borne from actual situations we commonly see. Concerning the second skill appointment, could it be allowed if the city requested, and CalPERS approved, extensions for the original appointment for the 2-year period in between when the work was needed, and would that be approved by CalPERS? What if the second skill appointment was needed 4 years after the initial skill appointment? Is the “substantially different” requirement reset if a member reinstates from retirement and retires again?

It is also unclear if the second appointment would be “substantially different” from the first, if partially encompassed by the initial appointment. For example, the same city manager being appointed to a second skill appointment, but one that aligned with the human resources director position, because of their specialized skill and knowledge as it pertains to negotiations for the city. That work is technically encompassed as part of their initial city manager skill appointment and would not appear to be “substantially different.”

In all of the examples above, retirees are *currently able to perform that work for appointments lasting less than 24 or 48 months*, as long as the appointment is otherwise in compliance. While clarification on the *time-limit* for “limited duration” would be helpful for employers and retirees alike, the curtailment of similar skill appointments at a single employer seemingly contradicts the intent behind the sequence of legislative amendments and increases the statutes complexity.

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Imposition of Additional Administrative Burdens and Complexity

Another additional requirement imposed by the proposed regulation is, because nearly half of all skill appointments exceed 24 months, all skill appointments beyond that point require a formal duty statement. Under the proposed section 574.1(a)(4)(A), a contracting agency's governing body must now take action to approve a resolution in a public meeting in order to extend a skill appointment past 24-months. That resolution would need to include a reason why the work cannot be performed "satisfactorily by non-retired employees."

Relevant here, is that section 574.1(a)(6) only requires employers to retain these approvals, and makes no mention of whether CalPERS would review such approvals. Meaning that, after a skill appointment has been completed, an agency's explanation of why non-retirees are unable to perform the work "satisfactorily" could result in a compliance violation and bring the full consequences of Gov. Code Section 21220, such as reinstatement, on the retiree. Since a definition of "satisfactorily" in this context is not provided, it is unclear what qualifies in this regard. This adds unnecessary complexity and risk to the law, and further constrains what is already allowed under the statute.

Not only is the additional public approval cumbersome for governing bodies, but the timeline governing the need for specialized work is not always accommodating, and this unnecessary step may not only delay the appointment itself, but could prevent the work from being done.⁶ Completing specialized work timely or within a specific timeframe is a common impetus for skill appointments in the first place, and a governing body may not be able to have a public meeting with 1 or 2 months of knowing that the specialized work will need to continue.

Further, section 574.1(a)(6) is unclear concerning whether a duty statement would now be required for all skill appointments or only for those requiring extensions past the initial 24 months. In both circumstances, though, requiring a formal duty statement for all skill appointments is another added constraint from what is currently allowed under the statute. It is unreasonable to require agencies to approve a formal duty statement for all limited duration skill appointments when the intent of the appointment focuses on a specialized skill and not a position. In fact, CalPERS has regularly informed its contracting employers that extra help appointments cannot be to any regular position of the employer. Thus, this requirement runs in direct conflict with the intent of the statute. The context of Gov. Code Sections 21224 and 7522.56 is that the work would not be on a full-time basis and does not require performing all duties of a given position.

In fact, the compensation limitation for skill appointments is based on a comparison to "other employees performing comparable duties." If the intent was to limit skill appointments to

⁶ See section 574.1(a)(5) concerning time counted towards extensions



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formal classifications with duty statements, it is reasonable to assume that the statute would have specified that requirement. But, the language and context of the statute implies that *there will be* situations where the work performed during a skill appointment would not directly correspond to a formal position or classification's duties, and in those situations, the compensation is still limited to what is received by employees performing *comparable* work, not identical work.

Moreover, the duty statement requirement further limits the type of currently compliant work that can be performed under a skill appointment. This is because skill appointments sometimes encompass or incorporate duties of multiple positions or current duty statements within the retired annuitants assigned work, because of their specialized skill.

In some cases, and to avoid running afoul of CalPERS' retired annuitant rules, some project-based work intended to be completed by an independent contractor is done by a retired annuitant in a compliant skill appointment. This project-based work is unlikely to correspond to a formal duty statement. A plain reading of the language implies that the usage refers to a formal duty statement, but if the intent is not to reference a formal duty statement, but just an explanation of duties performed during the skill appointment, the regulation should then clarify that point and define the term "duty statement."

These additional administrative actions for skill appointments will be a drain on public resources as public agencies need to spend additional time not only completing the tasks, but interpreting the complexity within the proposed language.

Temporary Upgrade Pay

Again, the intent to provide an explanation for the use of "limited duration" in the definition of TUP is going to be helpful for both contracting agencies and members. However, the proposed language here also injects unnecessary complexity and excludes TUP work that is already compliant and limited to 24 months.

The definition of an "appointment" here is also unclear and implies additional restrictions to when this compensation can be compliant. It appears that the language only includes compensation received for an employee's appointment to a higher position or classification *when that upgraded position or classification was immediately subsequent to a permanent appointment held by another individual.*

Currently, TUP appointments less than 24 months can include situations where an employee is appointed to an upgraded position or classification that was vacated for some time due to budgetary concerns, illness, unforeseen separation, or difficulties in recruiting for that position. Compensation for those appointments would not be compliant under the proposed





Andrew White, Regulation Coordinator
August 1, 2022
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regulation, since the appointment was not “immediately subsequent to a permanent appointment.” Here, as above, the unnecessary definition can be removed and achieve the same result, i.e. limit appointments to 24 months and remove subsection (b)(1).

While rare, classic members with 3-year final compensation periods do hold TUP appointments for more than 24 months due to unexpected events. Important to note here, is that special compensation earned solely within an member’s final compensation period is not compliant and excluded from calculations.⁷ Because of this intersection, there are situations where compensation for those TUP appointments would not be compliant under the proposed language for members who have not received TUP before in their career, and end up receiving compensation for a TUP appointment of less than 24 months which happens to fall entirely within their 36-month final compensation period. The proposed regulation does state that time spent working in current TUP appointments will not count towards the 24-month limit, if the proposed language is adopted. However, this language is clarifying in nature and, if applied retroactively, would make these situations noncompliant and result in adverse benefit adjustments to impacted members.

In our experience, most TUP appointments are completed within 24-months, which is a reasonable time-frame. But, we wanted to bring this implication to the Board’s attention so that the proposed language is revised to ensure it is not applied retroactively. Alternatively, the time limitation could be increased to 48 months, instead of 24 months, which is also consistent with the emphasis on 48 months as it relates to skill appointments.

Conclusion

While we are familiar with the subject matter, the proposed regulation was not easily understood and its application not immediately clear. The proposed regulation is unnecessarily complicated. It is unlikely that contracting agencies will be able to decipher what constitutes a compliant skill appointment under the proposed regulation in their normal course of work without committing additional resources each time a retiree is appointed.

For the reasons above, we submit that the proposed regulation does not provide a clear definition of “limited duration,” is overly complex, and further limits appointments which are already compliant and within the proposed time limit. As such, we urge the CalPERS Board of Administration to not approve the proposed regulation *in its current form*.

Ultimately, much of the expected confusion and negative impacts to retirees could be avoided by removing the requirement for subsequent skill appointments at the same employer being for “substantially different” work, removing the requirement for duty statements, and simply

⁷ See 2 CCR 571(b)(7).



Andrew White, Regulation Coordinator
August 1, 2022
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limiting the proposed regulation to clarifying that a skill appointment is 24 months, with 12-month extensions up to 48 months that need to be documented by the agency, rather than certified in a public meeting with additional explanations. Appointments lasting longer than 48 months could then follow the process in proposed section 574.1(a)(7), where there are specific exceptions and CalPERS approves additional appointment extensions. This is “equally as effective in implementing the statutory policy” by defining “limited duration” and is “more cost-effective” and “less burdensome to affected private persons than the proposed action.”

Please contact the undersigned should you need further information.

Sincerely,

Isabel C. Safie
of BEST BEST & KRIEGER LLP

cc: Henry Jones, CalPERS Board President (via e-mail only)
Marcie Frost, CEO, CalPERS (via e-mail only)
Matthew G. Jacobs, General Counsel, CalPERS (via e-mail only)
Brad Pacheco, DEO, Communications and Stakeholder Relations, CalPERS (via e-mail only)

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
1989-90 REGULAR SESSION
BILL ANALYSIS

AB 1937 (Leslie)
Original

PERS POSITION: OPPOSE
(Staff Position
Only)

SUMMARY

The bill amends Section 21153 regarding post retirement employment to provide that a retiree can work for a PERS employer without reinstatement up to 120 working days or 960 hours in a calendar year.

BACKGROUND

The author believes existing post retirement employment limitations are too restrictive. Section 21153 presently provides a retiree may work without reinstatement up to 90 working days or 720 hours in a calendar year.

PERS is opposed to this bill because we are concerned about possible abuse of post-retirement employment. The intent was to allow the employment of trained employees in times of emergency or on special one-time assignments. It was not the intent to use retirees in place of regular workers.

Section 20336 (d) provides in pertinent part that a person will be excluded from membership unless they work more than 125 days if employed on a per diem basis or, if employed on other than a per diem basis, 1,000 hours within the fiscal year. The 1989 calendar year will have 247 work days or 1,976 working hours. This bill comes very close to employment that would, in terms of time worked, be subject to membership.

FISCAL IMPACT ON STATE BUDGET

Unknown. Two retirees occupying the same position consecutively would almost fill one position, a position in which the retiree receives his or her retirement allowance plus a salary which is not subject to retirement contributions and the employer makes no retirement contributions.





December 7, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The League of California Cities (Cal Cities)¹ respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

Earlier in 2022, Cal Cities requested several amendments to the previous version of these regulations, which generated significant concern. We are pleased that many of those concerns have been addressed. However, further clarification and additional flexibility is still needed.

The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

Additional amendments would give public agencies — particularly those in rural areas or working on highly technical projects — the flexibility needed to best serve their communities. Cal Cities proposes amendments to retain the existing extension structure but allow for reasonable flexibility and clarity that is consistent with the staffing demands of cities.

To avoid disruptions in public services provided to Californians statewide, Cal Cities urges CalPERS to make the following amendments to proposed regulation 574.1(a)

¹ Cal Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities monitors state and federal legislation of concern to cities and identifies legislation, including proposed rules and regulations, that have statewide significance.



because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.** 1

Government Code section 21224 states in relevant part that:

"(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration."

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a "limited duration." However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.²

To conform to the intent of Government Code section 21224, Cal Cities respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

Cal Cities recommends the following amendment:

"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)."

- 2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.** 2

Cal Cities recommends the following amendment:

² Gov. Code § 11349.1, subd. (a)(1).



" ...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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." 2, con't

3. **Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.** 3

Cal Cities recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~certifications in this subparagraph and subparagraph (C) below are ~~not~~made and submitted. 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."

Conclusion

Cal Cities appreciates the significant positive changes that have been made to these proposed regulations and the opportunity to provide additional comments. To further improve this proposed regulation, Cal Cities requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees. Please do not hesitate to contact me at jpina@calcities.org about Cal Cities comments.

Respectfully,



Johnnie Pina
Legislative Affairs, Lobbyist
League of California Cities



City of Brisbane
50 Park Place
Brisbane, CA 94005-1310
(415) 508-2100
(415) 467-4989 Fax

December 16, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation.Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of Brisbane respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

STATE HOW YOUR CITY USES EXTRA HELP RETIRED ANNUITANTS.

To avoid disruptions in public services, City of Brisbane urges CalPERS to make the following amendments to proposed regulation 574.1 (a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.**

1

Government Code section 21224 states in relevant part that:

"(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to

prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration." 1, con't

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a "limited duration." However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.¹

To conform to the intent of Government Code section 21224, City of Brisbane respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

City of Brisbane recommends the following amendment:

"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)."

2. **Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.** 2

City of Brisbane recommends the following amendment:

"...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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."

3. **Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.** 3

¹ Gov. Code § 11349.1, subd. (a)(1).

City of Brisbane recommends the following amendment in the introduction to subparagraph (B):

3, con't

"The board ~~will~~shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~met~~ made and submitted. 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."

Conclusion

To further improve this proposed regulation, City of Brisbane requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

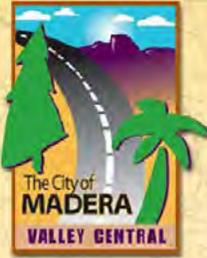
City of Brisbane appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,



Clayton L. Holstine
City Manager
City of Brisbane

cc: Your Cal Cities Regional Public Affairs Manager (via email)
League of California Cities, (via email: cityletters@calcities.org)



Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of Madera respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

The City of Madera faces significant struggles in finding qualified employees for positions requiring certification that is often specific to government. Examples would be civil engineers familiar with public infrastructure and project management, licensed building inspectors, transportation planners, and the like. For this reason, the City is required to supplement its full time staff with retirees still willing to work in order to maintain basic service delivery and support critical infrastructure maintenance and construction. In addition, retired law enforcement personnel often have very specialized knowledge in the California vehicle code and regulation enforcement that exceeds a municipal code enforcement officer. The City of Madera uses retired law enforcement officers with this specialized knowledge to ensure items such as abandoned vehicles are removed, supporting safe and clean neighborhoods in our community free of blight. Finally, our City also faces significant struggles in staffing Public Safety Dispatchers. These employees must pass both a rigorous qualifications test as well as pass an in-depth background examination. The City has found it necessary to utilize retired, qualified Public Safety Dispatchers to ensure our 911 call-center remains open and services are provided to ensure officer safety and support our community in obtaining police department services.

To avoid disruptions in public services, City of Madera urges CalPERS to make the following amendments to proposed regulation 574.1(a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12 month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed. 1

Government Code section 21224 states in relevant part that:

“(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.”

Nothing in the text of the statute indicates an intent to limit *when* such appointments may occur, only that such appointments may not occur for more than a “limited duration.” However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.¹

To conform to the intent of Government Code section 21224, City of Madera respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48 month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

City of Madera recommends the following amendment:

“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).”

2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level. 2

City of Madera recommends the following amendment:

“...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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.”

3. Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. “Applicable conditions” is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications. 3

¹ Gov. Code § 11349.1, subd. (a)(1).

12/16/2022

Comments: Office of Administrative Law File Number Z-2022-0607-10

Page 3 of 3 Comment 8

City of Madera recommends the following amendment in the introduction to subparagraph (B):

3, con't

"The board ~~will~~ *shall* grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ *certifications* in this subparagraph and subparagraph (C) below are ~~met~~ *made and submitted*. 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."

Conclusion

To further improve this proposed regulation, City of Madera requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

City of Madera appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,



Arnoldo Rodriguez
City Manager

cc: Rajveer Rakkar, League of California Cities (via email)
League of California Cities, (via email: cityletters@calcities.org)

CITY OF OAKLAND



150 FRANK OGAWA PLAZA • 3RD FLOOR • OAKLAND, CALIFORNIA 94612

Human Resources Management Department
Ian Appleyard, Human Resources Director

(510) 238-6450
FAX (510) 238-2976
TDD (510) 238-3724

Comment 9

December 13, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of Oakland respectfully requests consideration of several comments regarding the above-referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility are still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

Like many California cities, the City of Oakland is facing a staffing crisis. Organizations such as ours thrive on employee longevity. By restricting the use of retired annuitants, CalPERS will inflict great organizational harm. It will negatively impact service delivery, knowledge transfer, and organizational development. Annuitants are used to perform public safety background checks, undertake special complex projects of a limited duration, augment existing staff, and provide executive leadership.

To avoid disruptions in public services, the City of Oakland urges CalPERS to make the following amendments to proposed regulation 574.1 (a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

Comment 9

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.**

1

Government Code section 21224 states in relevant part that:

"(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration."

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a "limited duration." However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.¹

To conform to the intent of Government Code section 21224, the City of Oakland respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

The City of Oakland recommends the following amendment:

"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)."

- 2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.**

2

The City of Oakland recommends the following amendment:

¹ Gov. Code § 11349.1, subd. (a)(1).

" ...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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."

Comment 9

2, con't

3. **Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.** 3

The City of Oakland recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~not~~ made and submitted. 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."

Conclusion

To further improve this proposed regulation, the City of Oakland requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

The City of Oakland appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,


Ian Appleyard, Human Resources Director
Human Resources Management Department
City of Oakland

cc: League of California Cities, (via email: cityletters@calcities.org)



City Council
311 Vernon Street
Roseville, California 95678

December 15, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of Roseville (Roseville) respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

To avoid disruptions in public services, Roseville urges CalPERS to make the following amendments to proposed regulation 574.1(a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.**

1

Government Code section 21224 states in relevant part that:

"(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration."

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a "limited duration." However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This

requirement does not find support in the plain text of Government Code section 21224, and the record ¹, con't fails to identify what public purpose such a requirement would serve.¹

To conform to the intent of Government Code section 21224, Roseville respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

Roseville recommends the following amendment:

"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)."

2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level. 2

Roseville recommends the following amendment:

"...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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."

3. Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications. 3

Roseville recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~ shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~not~~ made and submitted. 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."

To further improve this proposed regulation, Roseville requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

¹ Gov. Code § 11349.1, subd. (a)(1).

We appreciate the opportunity to provide comments on this proposed rulemaking action. Please contact Stacey Peterson, Human Resources Director at SPeterson@roseville.ca.us with any questions regarding our comments.

Sincerely,



Krista Bernasconi
Mayor
City of Roseville

cc: Charles Anderson, Cal Cities Regional Public Affairs Manager (via email)
League of California Cities, (via email: cityletters@calcities.org)
Jason Gonsalves, Joe A. Gonsalves and Son



Office of the City Council

990 Palm Street, San Luis Obispo, CA 93401 3249
805.781.7114
slocity.org

Comment 11

December 16, 2022

CalPERS Board of Directors
Pension & Health Benefits Committee
400 Q Street
Sacramento, CA 95811

VIA E-Mail: Regulation_Coordinator@calpers.ca.gov

Re: Proposed Regulation for the Definition of Limited Duration Employment

Dear CalPERS Board of Directors,

The City of San Luis Obispo would like to share our concerns with the proposed regulation of the definition of "limited duration employment". The proposed language is overly restrictive and may prevent the City from being able to perform essential services to our community.

The proposed regulation would define "limited duration" as a limit of 24 consecutive months per appointment for retired persons serving after retirement, with an option of two extensions of 12 consecutive months per extension. The City of San Luis Obispo understands the intentions of the proposed regulations but given the current hiring environment finds that they are overly restrictive, and the City would be better served by more flexibility.

The City of San Luis Obispo is located in a geographically isolated area and as a result has a limited local labor pool. The proposed new regulations will negatively impact the City. Given the current labor market nationwide, it is already difficult to recruit qualified candidates for many positions. That challenge is even greater when it comes to recruiting for individuals with specialized skillsets such as planners, engineers, information technology professionals, and specialty positions such as transit managers.

Further exacerbating the ability to recruit quality candidates are changes to CalPERS retirement system brought about by the PEPRA retirement tier. These changes, while necessary, have already put the City at a competitive disadvantage to the private sector as the City can no longer point to the retirement benefits as a reason to leave higher pay in the private sector for the public sector. Allowing the City to hire retirees as limited-duration employees gives the City access to high-quality employees for short periods of time to fill gaps in the local labor pool, to accomplish knowledge transfer and new staff development, and to continue providing services to the community.

The City uses limited-term positions prudently to meet the needs of the City, but due to recruitment, retention and training needs, sometimes that results in individuals with specialized skills working for more than a few years in a limited-term capacity, or being needed during successive staff transitions. The City and its residents who rely on the

Re: Proposed Regulation for the Definition of Limited Duration Employment

Comment 11

quality and consistency of its services are best served by flexibility at the local level to make these decisions about when to hire a limited-term position. One-size fits all rules at the state level cannot easily accommodate the volatile, fluid and evolving nature of labor markets like we are now experiencing and cannot accommodate rapidly evolving and unique changes in the day-to-day operational needs of most cities.

The City urges CalPERS not to adopt these proposed regulations and continue to allow local hiring decisions to be made at the local level, where decisions can be informed by the unique needs of a particular city and can accommodate evolving local labor market fluctuations.

Sincerely,

A large black rectangular redaction box covering the signature of Erica A. Stewart.

Erica A. Stewart
Mayor
City of San Luis Obispo

c: Senator John Laird, Email: Senator.Laird@senate.ca.gov
Assemblymember Dawn Addis, via Legislative Director Julie.Cravotto@asm.ca.gov
Johnnie Pina, League of California Cities, jpina@cacities.org
League of California Cities, Email: cityletters@calcities.org



December 13, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of Santa Cruz respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

Our City utilizes retired annuitants in multiple ways across the City. As we have seen a significant number of employees retire or resign, the ability to fill those positions becomes extremely difficult. Not only does the City lose valuable institutional memory, but the City then experiences significant workload issues. In addition the City of Santa Cruz is located in a very high cost of living area which makes it very difficult to hire new employees. Utilizing retired annuitants who may already be located nearby helps the City maintain critical services.

To avoid disruptions in public services, City of Santa Cruz urges CalPERS to make the following amendments to proposed regulation 574.1 (a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.**

1

Government Code section 21224 states in relevant part that:

“(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.” 1, con't

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a “limited duration.” However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.¹

To conform to the intent of Government Code section 21224, City of Santa Cruz respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

City of Santa Cruz recommends the following amendment:

“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).”

- 2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.** 2

City of Santa Cruz recommends the following amendment:

“...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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.”

¹ Gov. Code § 11349.1, subd. (a)(1).

3. **Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.**

The City of Santa Cruz recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~not~~ made and submitted. 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."

Conclusion

To further improve this proposed regulation, City of Santa Cruz requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

City of Santa Cruz appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,

Lisa Murphy
Deputy City Manager/Director of Human Resources

cc: Deanna Sessums Regional Public Affairs Manager (via email)
League of California Cities, (via email: cityletters@calcities.org)



456 West Olive Avenue
Sunnyvale, CA 94088-3707

408-730-7473
TDD/TYY 408-730-7501
sunnyvale.ca.gov

December 14, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720
Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

Larry Klein
Mayor

Alysa Cisneros
Vice Mayor

Gustav Larsson
Councilmember

Glenn Hendricks
Councilmember

Russ Melton
Councilmember

Omar Din
Councilmember

Anthony Spitaleri
Councilmember

The City of Sunnyvale respectfully opposes the proposed new rules as it restricts our ability to hire staff with specialized skill and experience on a short-term/part-time basis. If the Board proceeds with these new regulations, we request consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

While the City of Sunnyvale is pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

The City of Sunnyvale has hired retired annuitants to augment City services when there are special projects or additional work that cannot be accommodated by regular staff or qualified temporary casual staff. The City has hired both former City of Sunnyvale retirees as well as retirees from other agencies. Retirees have worked part-time to provide building inspection for small project inspection, to provide specialized training to public safety personnel, and to provide backfill for critical vacant positions. Retirees have experience that requires very little training. The retirees have typically worked during peak seasons, while conducting a recruitment for permanent help, or throughout the year on an as-needed basis to provide essential City services.

To further improve this proposed regulation, the City of Sunnyvale requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees. The City of Sunnyvale urges CalPERS to make the following amendments to proposed regulation to avoid disruptions in public services.



1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.

1

Government Code section 21224 states in relevant part that:

“(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.”

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a “limited duration.” However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.

To conform to the intent of Government Code section 21224, the City of Sunnyvale respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

The City of Sunnyvale recommends the following amendment:

“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).”

2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.

2

The City of Sunnyvale recommends the following amendment:

“ ...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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."

3. Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.

3

The City of Sunnyvale recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~ shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~not made and submitted~~. 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."

For these reasons, we would appreciate your consideration of our recommended amendments to the proposed language. The City of Sunnyvale appreciates the opportunity to provide comments on this proposed rulemaking action. Please do not hesitate to contact me or Tina Murphy, Director of Human Resources, tmurphy@sunnyvale.ca.gov or 408-730-3001, if you have any questions.

Sincerely,



Larry Klein
Mayor

cc: City Council
Kent Steffens, City Manager
Teri Silva, Assistant City Manager
Tina Murphy, Director of Human Resources
Seth Miller, Cal Cities Regional Public Affairs Manager
League of California Cities, cityletters@calcities.org



City of Temecula

City Council/City Manager

41000 Main Street • Temecula, CA 92590
Phone (951) 694-6444 • TemeculaCA.gov

December 16, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of Temecula respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see that many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

To avoid disruptions in public services, City of Temecula urges CalPERS to make the following amendments to proposed regulation 574.1(a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.**

1

Government Code section 21224 states in relevant part that:

"(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration."

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a "limited duration." However, by requiring that

exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.¹

1, con't

To conform to the intent of Government Code section 21224, City of Temecula respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

City of Temecula recommends the following amendment:

"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)."

2. **Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.**

2

City of Temecula recommends the following amendment:

"...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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."

3. **Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.**

3

City of Temecula recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~met~~ made and submitted. 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

¹ Gov. Code § 11349.1, subd. (a)(1).

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.”

Conclusion

To further improve this proposed regulation, City of Temecula requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

City of Temecula appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,



Aaron Adams
City Manager
City of Temecula

cc: Erin Sasse, Regional Public Affairs Manager, Riverside Division, (via email: esasse@calcities.org)
League of California Cities, (via email: cityletters@calcities.org)



December 14, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

Sent Via Email: Regulation_Coordinator@calpers.ca.gov

RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; Section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Dear Mr. White:

The City of West Sacramento respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

We are pleased to see than many of the most concerning pieces of the prior version of these proposed regulations have been resolved. However, further clarification and additional flexibility is still needed. The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

Employee retention and turnover are at an all-time high, along with the national labor shortage, leaving a supply gap for available talent. About a quarter of all current public sector job postings are getting seven applications or fewer. There has been a 56% drop in applications per open job from 2021 to 2022. As a result, nearly 20% of state and local government agencies have reduced services due to staffing shortages. If this trend continues over the next quarter, over 40% of public sector agencies expect to cut services to the public.¹ Extra Help Retired Annuitants possess specific expertise and experience which are critical in facilitating workforce continuity and support of our city's mission-critical projects.

To avoid disruptions in public services, the City of West Sacramento urges CalPERS to make the following amendments to proposed regulation 574.1(a) because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

1. **Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.** 1

¹ *"The Quiet Crisis in the Public Sector"*, Neogov.com(p1). Accessed Dec. 14, 2022.

Government Code section 21224 states in relevant part that:

“(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.”

1, con't

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a “limited duration.” However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.²

To conform to the intent of Government Code section 21224, City of West Sacramento respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

City of West Sacramento recommends the following amendment:

“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).”

2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.

2

City of West Sacramento recommends the following amendment:

“...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. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. 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.”

3. Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. “Applicable conditions” is a phrase that is not

3

² Gov. Code § 11349.1, subd. (a)(1).



otherwise used and could be interpreted to refer to something other than the required 3, con't certifications.

City of West Sacramento recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~ shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~not~~ made and submitted. 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)

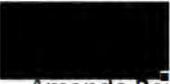
below, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar."

Conclusion

To further improve this proposed regulation, City of West Sacramento requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees.

City of West Sacramento appreciates the opportunity to provide comments on this proposed rulemaking action.

Sincerely,


Amanda Berlin
Assistant City Manager
City of West Sacramento

cc: Charles Anderson, Regional Public Affairs Manager, Sacramento Valley Division (via email: canderson@calcities.org)
League of California Cities, (via email: cityletters@calcities.org)



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EXECUTIVE DIRECTOR

Graham Knaus

December 16, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

RE: Proposed adoption of section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR).

Dear Mr. White:

On behalf of the California State Association of Counties (CSAC), representing all 58 counties in the state, I would like to thank you for the opportunity to provide comments and feedback on this proposed rulemaking action, which seeks to define "limited duration" employment and provide clarity and uniformity for CalPERS-covered employers.

This rulemaking action comes at a time of significant labor disruption and difficulty hiring in almost every economic sector. As referenced in our July 21, 2022, letter commenting on the initial rulemaking action, some counties are reporting 20 and even 30 percent vacancy rates, and not just for traditionally hard-to-fill positions. Nearly three out of four counties have less general fund revenue per capita now than they did before the Great Recession, in real dollars. This alarming and little-known fact is even more daunting when considering the significant downstream impact this rulemaking action would have on critical and difficult positions, such as first responders, health care professionals (including critically impacted behavioral health positions), and other positions that are relied upon intermittently, such as certain positions within the voting and elections workplace.

Layering new restrictions and administrative requirements on counties would lead to greater disruptions in county services. At a time when the state is expected to experience significant budgetary shortfalls, it is not prudent to alter the longstanding requirement that a retired person may be temporarily employed for up to 960 hours in any given fiscal year without reinstatement. With this context, we offer the following comments.

Improvement in the definition of limited duration employment.

1

The revised text provides much needed clarity to the definition of "limited duration" under proposed section 574.1(a). The amended language establishes an identifiable start date for post-retirement appointments and is an improvement from the initial text proposed during the 45-day comment period.

The notification requirements are administratively burdensome.

2

We were disappointed to see additional mandates under proposed section 574.1(a)(2), requiring a CalPERS-covered public employer to notify CalPERS of an appointment end date not to exceed 24 consecutive months from the appointment start date and any end date of an extension. These administratively burdensome changes in the revised text would likely require hundreds, if not thousands, of notifications to be sent from counties to CalPERS. The requirement that a CalPERS covered employer

Mr. Andrew White
December 16, 2022
Page 2 of 3

notify CalPERS of an appointment end date is not administratively feasible due to the temporary nature of some of the appointments. For example, if the retired annuitant was appointed to a position that was part of a project with a six-month timeframe and the project ultimately took nine months, would the appointment authority have to temporarily prohibit the employee from working at the end of six months? Conversely, would the CalPERS-covered employer be required to submit an addendum if the retired annuitant worked for nine months instead of the six months, as originally noticed?

We request that CalPERS seek other, less administratively burdensome options to would reduce the reporting requirements for CalPERS-covered public employers. For example, the regulations could be amended to specify that CalPERS-covered employers must notify CalPERS of an appointment start date since the "end date" requirements are clear.

The public meeting certification process is administratively burdensome.

3

The mandate under proposed section 574.1(a)(3)(A), which requires the governing body of a CalPERS-covered contracting agency to certify, by resolution at a public meeting, its approval of the appointment extension that includes the reason for extending the appointment, reason the duties cannot be performed by non-retired employees, details in regard to the plan for transitioning the duties to non-retired employees, and other mandates, would create a substantial workload for counties. Specifically, these mandates would require several hours of staff time for each county to develop the mandated resolution and required findings, and subsequently place the resolution on the agenda for a vote.

Adding these new requirements has the potential to significantly slow county business as routine extensions and personnel transactions would require resolutions under these proposed regulations. We therefore request that the text be revised to create a certification process similar to the process described under proposed section 574.1(a)(3)(B), which authorizes the California Department of Resources (CalHR) to certify the requirements under section 574.1(a)(3)(A) by memorandum. The streamlined process under section 574.1(a)(3)(B) available to the state should also be available to other CalPERS-covered employers.

The extension period timelines under proposed section 574.1(a)(4) are rigid and impractical.

4

Under proposed section 574.1(a)(4), the first extension period starts the day after end of the 24 consecutive month period for the initial limited term of appointment. There are many circumstances where a retired annuitant may work for 24 consecutive months, take a break, and then six months or 12 months later begin to work as a retired annuitant again. Under the proposed regulations, the first extension begins the day after the end of the 24-month period, meaning the maximum amount of time that a retired annuitant can work is for 48 consecutive months, regardless of the amount of time actually worked during that period.

Coupled with the requirements under proposed section 574.1(a)(3), which requires extensions to go through governing body via resolution, this mandate would have a substantial impact on the amount of time that a limited duration employee can serve beyond the initial 24-month period, rendering some extensions meaningless since they would first require the process under proposed section 574.1(a)(3). We therefore request language specifying that the first and second extension periods begin on the first day *worked* after the end of the 24 consecutive period and the first day *worked* after the end of the first extension, respectively. The fiscal consequences of not securing these changes may be severe, as it would significantly reduce the amount of time that a retired annuitant could work beyond the initial 24-month period and two 12-month extensions. Some counties, particularly for behavioral health positions, could

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potentially be forced to rely on contract staff, which often results in significantly higher costs than civil servants. At a time when the state is suffering a severe shortage in behavioral health clinicians, it would be catastrophic to adopt inflexible regulations that would prevent counties from utilizing all resources available to address this public health crisis.

There is no administrative flexibility to suspend these regulations during a local or state disaster emergency, public health crisis, or other emergency.

5

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which suspended the work hour limitations for retired annuitants. As the COVID-19 global pandemic has illustrated, during a local or state emergency, many critical positions may be needed as part of the response. For example, first responders play a critical role in responding to emergencies as well as health professionals and other critically needed positions.

We respectfully request that additional language be added to provide an opportunity for a CalPERS-covered employer to petition CalPERS to waive some or all of the requirements of proposed section 574.1 during a declared local or state disaster emergency, public health crisis, or another emergency.

Again, CSAC appreciates the opportunity to provide comments on this proposed rulemaking action. Please do not hesitate to contact me at 916.247.8692 with any questions or comments.

Sincerely,



Kalyn Dean
Legislative Representative



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

December 14, 2022

Andrew White, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720

Re: Pending Modified Regulations Defining "Limited Duration Employment"

Dear Mr. White:

Thank you for the additional opportunity to comment on the California Public Employees' Retirement System (CalPERS) Board of Administration's proposed modified regulatory action that would define "limited duration employment." I write on behalf of the California State Sheriffs' Association, which represents California's 58 elected county sheriffs in various matters including regulatory and legislative proceedings.

CSSA's concerns with the proposed regulation remain centered on the responsibility of sheriffs' offices to protect the public safety and how the proposed definition of "limited duration," which would, with limited exception, and not relevantly amended by the recent proposed modifications, limit the appointment of a retired person to 24 consecutive months in the employ of a CalPERS-participating employer, would make that job exceedingly more difficult and costly, especially in the context of current economic, employment, and societal realities.

In many, if not most, counties, sheriffs' offices continue to experience significant difficulties in recruiting and retaining staff. Substantial vacancy rates and rising employment costs make it particularly challenging to fill necessary staff positions. Further, given the vital tasks law enforcement agencies undertake coupled with the public trust that is instilled within these offices, having qualified applicants, of which there is currently a shortage around the state, is more important than ever. Sheriffs' offices are also experiencing considerable numbers of resignations and retirements, which bring the recruitment challenges noted above more clearly into focus. The bottom line is that significant limitations on the ability to utilize retired annuitants to appropriately staff vital positions, protect the public safety, retain community trust, and conserve county resources are ill-timed and should not hamstring public safety agencies.

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Cory Salzillo
Legislative Director

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Retaining flexibility as it relates the utilization of retired annuitants serves many benefits. Chief amongst those is the ability to have access to experienced staff, as opposed to those with less time on the job, who have already been trained in the disciplines in which they are asked to serve upon their return after retirement. The benefits derived from being able to appoint veteran staff who often require less in the way of initial training because they have done the job are many, including conserving agency training funds.

Sheriffs' offices undertake many roles in the community and having the ability to bring back knowledgeable staff to serve, including in specialized units or assignments, is crucial. County sheriff offices utilize retired annuitants in myriad ways including to work on cold cases, complete background investigations, serve in specialty units that are intermittently staffed (e.g., marine patrol), and perhaps most commonly, to provide vital court security services. Given the dynamic nature of court proceedings, the lack of control sheriffs have over court calendars, and the statutory mandate that sheriffs provide court security services, retired annuitants provide many, if not most, counties with the ability to be as nimble as possible to meet expected and unplanned security needs. Furthermore, many counties have been experiencing widening chasms between the funding the state provides for court security and the actual cost of providing those services, and this has been the case prior to any formal discussion about changing the nature of the use of retired annuitants. The addition of new judgeships, capital improvements to court facilities, increased reliance on specialty courts, and case backlogs created and exacerbated by COVID-19 all call for sheriffs' offices to have as much flexibility when it comes to protecting safe and effective access to judicial resources. In fact, the Governor's emergency suspension of the 960-hour limitation on retired annuitants during the pandemic demonstrates how important the service of retired annuitants is.

We again urge you to exempt public safety agencies from the scope of this regulation. Flexibility to serve public safety and community protection needs is paramount and we are concerned that the proposed definition of "limited duration," even as amended by the recent modifications, will disproportionately impact the ability of county sheriffs' offices to achieve those things. Thank you for your consideration of our concerns and please do not hesitate to contact us regarding these comments.

Sincerely,



Cory M. Salzillo
Legislative Director

To whom it may concern,

I want to comment to the CalPERS board on the proposed revised regulation for the definition of limited-duration retired annuitants. The consequences of the proposed regulatory definition of a limited duration of retired annuitants may cause an unnecessary cost to the agency using annuitants and all California taxpayers.

If CalPERS moves forward with the proposed definition, one of the consequences will inevitably be the creation of an additional layer of cost to hundreds of agencies within the state. The cost will be to the agencies with annuitants working for them and to taxpayers who support city, county, and state.

It is common practice in the federal government to hire back retired workers who have experience and skill in particular areas, by using a private company that act as a workaround to the regulation prohibiting returning to work after retirement.

These private companies hire retired federal government employees to work at jobs requiring specific knowledge and skills the government needs to do business. The private companies charge the government a specific rate for providing employees with the necessary skills and then pay the employee a lesser rate, pocketing the difference as profit. The result is the federal government pays a premium to a private company costing the agency more than what they would have paid the annuitant had they hired them directly.

The private company simply provides a "Workaround" that allows the use of an annuitant without following any laws governing the annuitant, including work hours or duration.

The fact is retired annuitants in public service or in the private industry have a wealth of specific knowledge and understanding of where they worked for decades. Private industry knows this and uses retired employees to help in many vital ways. Understandably, local, state, and federal agencies would want to do the same.

If CalPERS elects to limit the use of retired annuitants being hired under the proposed limited duration definition, it will just be a matter of time before agencies start to utilize for-profit companies to employ annuitants. Why? Because every employer, private or government, has a challenge with succession on all levels. This challenge will not lessen as time goes on.

The argument raised by Union representative I viewed at the CalPERS hearings on the subject rang a little hollow. First, I heard no hard data supporting the Union's argument that agencies would not hire full-time workers because they could use retired employees outside of the Union membership. Having annuitants work in positions that full-time employees would have and contributing dues to the Union or even CalPERS can be resolved with the requirement that if an annuitant works beyond a set number of hours, then due or contributions need to be made appropriately.

The Board has spent considerable time and effort on this matter. Please do not waste that. Spend a little more time and effort to consider the consequences of the definition on all stakeholders. A little more thought about the consequences will be time and effort well spent.

Thank you

Keith McKelvey

Memorandum

Date: December 9, 2022

To: Andrew White, Regulation Coordinator
California Public Employees Retirement System
Post Office Box 942720
Sacramento, California 94229-2720

From: Department of Water Resources

Subject: California Department of Water Resources Comments to Working After Retirement Regulations

The Department of Water Resources (DWR or Department) appreciates the need to define "limited duration" employment for those retirees hired after retirement by a state entity due to the need for their specific skills, as provided for under Government Code (GC) §§ 7522.56, 21224 and 21229. DWR submits the following comments for the 15-day comment period for the California Public Employees Retirement System's (CalPERS) 2 CCR § 574.1 draft regulations.

2 CCR § 574.1(a)

DWR suggests that the word "served" (in the 4th line) be changed to the present tense of "serves" since the appointment must be approved before the person can serve any time in the appointment.

2 CCR § 574.1(a)(3)(B)

DWR suggests that the (i) for the first paragraph under (B) is not necessary since the text is in the first paragraph under subsection (B). Then the numbering below would change for text applying to differentiate state universities and the legislature.

Also for the state universities, since Trustees is plural DWR believes that "certifies" (in the second line) should be changed to "certify".

2 CCR § 574.1(a)(4)

DWR again suggests that the word "served" (in the 7th line) be changed to the present tense of "serves" since the appointment must be approved before the person can serve any time in the appointment.

2 CCR § 574.1(a)(6)(A)(ii)

The first sentence is only phrases, not a complete sentence. And, if joined with the rest of the text it is a long and confusing sentence. DWR suggests that this be amended for clarity and suggests the following:

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(ii) For a board exemption authorizing an extension of twelve consecutive months, the time limit starts on the date an exemption request is granted by the board. For any subsequent exemption request the board approves, the time limit starts on the first day following the end of the prior twelve consecutive month extension for which the prior exemption was granted. The twelve consecutive months limit applies for any extension approved by the board regardless of how many months or hours in those months the retired person serves during that extension period. 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 an 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.

2 CCR § 574.1(a)(6)(C)

Similar to a comment above, DWR suggests that the (i) for the first paragraph under (C) is not necessary since the text is in the first paragraph under subsection (C). Then the numbering below would change for text applying to differentiate state universities and the legislature.

2 CCR § 574.1(a)(8)

This text is also a long and confusing sentence and appears to be missing some verb and explanation in one section. Since there are two parts to the definition, DWR suggests that it be divided into subparts for clarity, as follows::

(8) For purposes of this subdivision, an appointment is defined as ~~either~~ follows:

- (i) ~~Either a~~ A post-retirement position with the same CalPERS-covered public employer for which the retired person performed duties before retirement, as long as 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~~
- (ii) A post-retirement position for a different CalPERS-covered public employer from any previous CalPERS-covered public employer for which the retired person performed duties ~~for after~~ before retirement, while in a position subject to this regulation.

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2 CCR § 574.1(b)

DWR suggests that the word "served" (in the 10th line) be changed to the present tense of "serves" since the appointment must be approved before the person can serve any time in the appointment.

2 CCR § 574.1(c)

DWR suggests that the word "served" (in the 4th line) be changed to the present tense of "serves" since the appointment must be approved before the person can serve any time in the appointment.

2 CCR § 574.1(c)(3)(B)

The text appears to be missing the word "after" following position/classification" (in the 2nd line).

DWR appreciates your consideration of the above comments. If you, or your staff, have any questions about the above concerns, please contact me at (916) 920-7478, or at Melinda.williams@water.ca.gov.

[REDACTED]
Melinda L. Williams
Attorney III
California Department of Water Resources