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# **Circular Letter**

**TO: ALL STATE AGENCIES, PUBLIC AGENCIES, EMPLOYEE REPRESENTATIVES, AGRICULTURAL DISTRICTS, STATE COLLEGES & UNIVERSITIES, COUNTY SUPERINTENDENTS OF SCHOOLS, AND INDIVIDUAL SCHOOL DISTRICTS**

**SUBJECT: WORKING AFTER RETIREMENT FOR A CALPERS-COVERED EMPLOYER**

The California Public Employees' Retirement System (CalPERS) Defined Benefit Plan is a tax-qualified pension plan under Section 401(a) of the Internal Revenue Code (IRC) and, as such, it must comply with the requirements of this section to maintain its tax-exempt status. Internal Revenue Service rules do not permit the distribution of benefits to a participant who retires prior to the plan's normal retirement age unless the participant has a "bona fide" separation from service.

Chapter 519, Statutes of 2003 (AB1584) added Government Code Section 21220.5 effective January 1, 2004. This section states:

"A retired person who has not attained the normal retirement age shall have a bona fide separation in service to the extent required by the Internal Revenue Code, and the regulations promulgated thereunder, before working after retirement pursuant to this article. The board shall establish, by regulations, the criteria under which a bona fide separation is satisfied."

CalPERS will be promulgating regulations within the next year to implement Government Code Section 21220.5 which impacts persons who retire for service retirement prior to their applicable normal retirement age and return to work for a CalPERS covered employer. In the meantime, it is recommended that retiring members and employers comply with federal separation from service requirements:

## **Federal Law Requirements to Prevent In-Service Distributions:**

- Prior to a member's service retirement, there can be no agreement to render service after retirement (either verbal or written) by members who retire before reaching their normal retirement age regardless of the length of the separation.

- A member/retiree who has not reached their normal retirement age must have a separation from service prior to returning to CalPERS-covered employment.

Until CalPERS has promulgated regulations, we recommend you use the normal retirement age as stated in the contracts between the employer and CalPERS or if no contract is available, the age in the Benefit Formula title. For example, age 55 for the 2%@55 formula.

If you have any questions, please contact the Employer Contact Center at **888 CalPERS** (or **888-225-7377**).

Kenneth W. Marzion, Division Chief  
Actuarial & Employer Services Division