

EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES

Effective January 1, 2013

POST-RETIREMENT EMPLOYMENT BASICS:

Generally, if the position in which a retiree will work is one that is subject to CalPERS membership where an active employee would earn CalPERS service credit, i.e. there is an employer-employee relationship, then a retiree hired to work in that position is subject to the retirement law requirements.

The common law employment test is used by the courts and CalPERS Board of Administration to determine "employee" or "independent contractor" status under the PERL. Under this test, a position title or characterization of the services performed is not the only determining factor of employee / independent contractor status. Just because a retiree is retained for a position that is called an independent contractor, consultant or third-party employer position, does not necessarily mean employment in that position is exempt from the retired annuitant requirements. Therefore, a retiree retained to work as an "independent contractor", "consultant", or through a "third party employer" in any position that would meet the common law employment test may be subject to mandatory reinstatement from retirement if the employment does not otherwise meet the retirement law requirements.

A retiree hired as an independent contractor, consultant, or contract employee through a third party employer to work in any position that would meet the common law employment control test would be inappropriately appointed under the retirement law and could be subject to mandatory reinstatement from retirement if the employment does not otherwise meet the retirement law requirements.

- **RETIRED ANNUITANT APPOINTMENTS:** CalPERS retirees cannot be hired into permanent or regular staff positions without reinstatement from retirement. Retirees should be hired into retired annuitant-designated positions only. These appointments are authorized during an emergency to prevent stoppage of public business or because the retiree has skills needed to perform work of limited duration. Since emergencies that would cause stoppage of public business are rare, e.g., disasters such as floods, earthquakes, etc., these appointments are generally those requiring skills needed to perform work of limited duration.
- **INDEPENDENT CONTRACTORS, CONSULTANTS AND CONTRACT EMPLOYEES THROUGH THIRD PARTY EMPLOYERS:** If you, the employer, hire a CalPERS retiree as an independent contractor, consultant or through a third party employer and the employment constitutes a common law employment (employer-employee) relationship, the employment is subject to the retirement law requirements and he or she must be enrolled as a retired annuitant in the myCalPERS system. If the employment is truly an independent contractor or consultant or is truly as an employee of a third party employer, i.e., a common law employer-employee relationship does not exist with the CalPERS employer, then the employment is exempt from the post-retirement employment requirements.

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- **POST-RETIREMENT EMPLOYMENT AUDIT REVIEW:** The CalPERS Office of Audit Services (OAS) Public Agency Audit Program reviews the hiring and employment of CalPERS retirees at all employers to ensure compliance with the requirements prescribed by the applicable sections of the California Government Code.
- **ENROLLMENT AS A RETIRED ANNUITANT:** The retiree must be enrolled as a retired annuitant in the my|CalPERS system, either directly in my|CalPERS or, for state agencies, through the Personnel Information Management System (PIMS).

ELIGIBILITY REQUIREMENTS BEFORE HIRING A RETIREE:

1. BONA FIDE SEPARATION IN SERVICE REQUIREMENT:

All Retirees: If a retiree is under normal retirement age at retirement, he or she cannot be hired for post-retirement employment without a bona fide separation from employment. The normal retirement age is the highest benefit formula age, e.g., age 55 for the 2% @ 55 formula. If there is more than one formula applicable to the retirement, e.g., the allowance has service based on both the 2% @ 55 and the 2% at 60 formula, the normal retirement age is the highest benefit formula age, or age 60, in this example. Members and retirees can look up their benefit formulas through their my|CalPERS online account or on their most recent CalPERS Annual Member Statement.

A bona fide separation must meet both of the following conditions:

- **There is no pre-determined agreement:** Prior to retirement, there was no agreement, written or verbal, between the employer and the member to work after retirement.
- **There is a 60 day separation from employment:** There is a period of 60 calendar days between the retirement date and the post-retirement employment date.

This requirement is a federal tax law and we, CalPERS, must comply with it to maintain our tax-deferred status.

2. UNEMPLOYMENT INSURANCE PAYMENT QUALIFICATION:

Upon accepting an offer of employment, every retiree must certify in writing to the employer that he or she did not receive any unemployment insurance payments within the 12 months prior to this appointment for previous retired annuitant work with any CalPERS employer.

If after hiring a retiree, you, the employer, discover the retiree did receive unemployment insurance payments, as above, within the 12 months prior to the current appointment date, you must terminate the employment on the last day of the current

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pay period and that retiree is not eligible for reappointment by any CalPERS employer for 12 months following the last day of employment.

3. 180 DAY WAIT PERIOD BETWEEN RETIREMENT DATE & HIRE DATE:

All retirees must wait 180 days after their retirement date before he or she is eligible to begin post-retirement employment. This means a retiree cannot begin employment until the 181st day after his or her retirement date. There are four exceptions to the 180 day wait period requirement:

180 Day Wait Period Exceptions:

- **Firefighter or public safety officer:** The retiree is a firefighter or public safety officer, as determined in accordance with the definition set forth in California Code of Regulations 579.25, hired to perform a function or functions regularly performed by a public safety officer or firefighter.
- **Public agency or school employer certification and resolution:** The public agency or school employer must certify the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days has passed and, the appointment must be approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.

For school employers, the school district's county office of education is the governing body that must pass this resolution.

The certification and resolution should be received by CalPERS prior to the retiree's hire date. Email the certification and resolution to the mailbox BNSD_Post_Retirement_Administration@calpers.ca.gov or mail it to Post Retirement Administration, Benefit Services Division, PO Box 942711, Sacramento, CA 94229-2711.

- Sample resolutions with instructions are available online at www.calpers.ca.gov.
- **State agency certification and resolution:** State agencies must obtain approval from CalHR via the Personnel Management Liaisons (PML) Memorandum titled Retired Annuitants Hiring Exception Procedure, Reference No. 2013-001. CalHR submits the approval to CalPERS prior to the retiree's hire date.
- **California State Universities (CSU) FERP exception:** The retiree may participate, if eligible, in the Faculty Early Retirement Program (FERP) pursuant to a collective bargaining agreement that existed prior to January 1, 2013, or has been included in subsequent agreements.

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Disqualification for an Exception to the 180-day wait period:

- If a retiree accepts a Golden Handshake or any other employer incentive related to retirement, he or she must serve the 180-day wait period regardless of whether he or she would qualify for any of the exceptions above.

POST-RETIREMENT EMPLOYMENT RETIRED ANNUITANT REQUIREMENTS:

GC SECTION 7522.56:

- **Limited Duration Work & Retiree Skills:**

A CalPERS retiree can be appointed by the appointing power of the employer without reinstatement or loss of retirement benefits either during an emergency to prevent stoppage of public business or because the retiree has skills needed to perform work of limited duration. Since emergencies, e.g., disasters such as floods or earthquakes, etc., that would cause actual stoppage of public business are rare, these appointments are generally those requiring skills needed to perform work of limited duration. There should be some showing in the retiree's work history that he or she has previous experience and the skill set needed to perform the desired work.

- Is this a limited duration position, e.g., extra help work such as elimination of a backlog, work on a special project, or work in excess of what your permanent or regular staff employees can do and, it is not a permanent or regular staff position?
 - Retiree Skills: Is there some showing in the retiree's work history that he or she has previous experience and the skill set needed to perform the required work?
- **960 Hour Limit per Fiscal Year:**
 - A retiree is limited to working a maximum of 960 hours per fiscal year for all CalPERS employers. There is no exception to this limit. Retirees can be employed for more than one fiscal year as long as the employment continues to meet all of the requirements otherwise.
 - CSU academic retirees are limited to 960 hours per fiscal year or 50% of the hours employed during the last fiscal year of service prior to retirement, whichever is less. There is no exception to this limit.

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- **Rate of Pay Requirement:**
 - The compensation paid to any retiree must be within the monthly rate of pay range, i.e., cannot be less than the minimum nor exceed the maximum monthly base salary, paid to other employees performing comparable duties, divided by 173.333 hours to equal an hourly rate.
 - No other benefit, incentive, compensation in lieu of benefits, or other form of compensation can be paid in addition to this hourly pay rate.

- **Enrollment in the my|CaIPERS system:**
 - For public agency and school employers, the retiree must be enrolled as a retired annuitant and payrate with hours worked reported in the my|CaIPERS system. No retirement contributions are reported by the employer or member for retired annuitants. For state agencies and CSU employers, the retiree must be enrolled as a retired annuitant in PIMS.

GC SECTION 21221(h) POSITIONS – SPECIFIC REQUIREMENTS:

This section applies to public agency and school employers. The governing body for a school district is its county office of education.

Limited Duration Work & Retiree Skills:

- **Single interim appointment to a vacant position:** The governing body of a public agency or the county office of education of a school employer can appoint a retiree to work in a vacant position during the recruitment to permanently fill the vacancy or during an emergency to prevent stoppage of public business. This section is used to hire retirees on an interim basis to vacant managerial, executive or other unique positions, such as city manager, CIO, CFO, police chief, director, department heads, etc. Since emergencies that would cause the actual stoppage of public business, e.g., disasters such as floods or earthquakes, etc., are rare, these appointments are generally to provide a retiree with the needed skill set to work in the unique position during the recruitment to permanently fill the vacancy. The governing body's appointment should explain the need for the particular retiree's hire and there must be documentation that the governing body made the appointment in the form of a resolution, board minutes, etc.

There must be an open recruitment to permanently fill the position in place to hire a retiree. The retiree can be appointed only once to this position, thus, the employment agreement, contract, or appointment document must specify the end date of the appointment. There should be a showing in the retiree's work history that he or she has the previous experience and the skill set to perform the work of the position.

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- Is this an interim appointment, i.e., the retiree is not being hired as the permanent employee?
 - There must be an open recruitment to permanently fill the vacant position before the retiree is appointed. Is there an open recruitment to permanently fill the vacant position?
 - The retiree can be appointed only once to this position. Does the employment agreement, contract, or appointment document, etc., specify the end date for the appointment?
 - Is there some showing in the retiree's work history that he or she has previous experience and the skill set needed to perform the work required?
 - Was this appointment made and duly documented by this employer's governing body?
- **960 Hour Limit per Fiscal Year:**
 - The retiree is limited to working a maximum of 960 hours per fiscal year for all CalPERS employers. There is no exception to this limit.
- **Rate of Pay Requirement:**
 - The rate of pay range for GC section 21221(h) appointments is the monthly rate of pay range for the vacant position. The compensation paid to the retiree must be within the monthly rate of pay range, i.e., cannot be less than the minimum nor exceed the maximum monthly base salary, divided by 173.333 hours to equal an hourly rate.
 - No other benefit, incentive, compensation in lieu of benefits, or other form of compensation can be paid in addition to this hourly pay rate.
- **Enrollment in the my|CalPERS system:**
 - The retiree must be enrolled as a retired annuitant and payrate with hours worked reported in the my|CalPERS system. No retirement contributions are reported by the employer or member for retired annuitants.

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SERVICE AFTER RETIREMENT ON STATE BOARDS AND COMMISSIONS:

GC section 7522.57 provides the following conditions and limitations for service on any salaried state board or state commission by a retiree receiving a pension from a public retirement system who is first appointed on or after January 1, 2013:

Part-time state board or commission appointment: A retiree may serve without reinstatement or loss of retirement benefits upon appointment to a part-time state board or commission provided the salary received does not exceed \$60,000 annually. This salary shall be increased in any fiscal year in which a general salary increase is provided for state employees and such increase shall not exceed the general salary increases provided for state employees. The retiree shall acquire no benefits, service credit, or retirement rights with respect to this employment.

Full-time state board or commission appointment:

- A CalPERS retiree may serve on a full-time basis without reinstatement from retirement if he or she serves as a nonsalaried member and shall receive only the per diem authorized to all members of that board or commission. The retiree shall not earn any CalPERS service credit or benefits or make contributions with respect to the service performed. If a CalPERS retiree elects to receive the salary applicable to the board or commission, they must reinstate from retirement.
- A retiree from a public pension system other than CalPERS may serve on a full-time basis by choosing one of the following options:
 - The retiree may serve as a nonsalaried member and continue to receive his or her retirement allowance in addition to any per diem authorized to all members of that board or commission. The retiree shall not earn any CalPERS service credit or benefits or make contributions with respect to the service performed.
 - The retiree may suspend his or her retirement allowance or allowances, if receiving more than one, and enroll as a new member of CalPERS for the service performed on the board or commission. The pensionable compensation earned from this position shall not be eligible for reciprocity with any other retirement system or plan.

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POST-RETIREMENT EMPLOYMENT RESOURCES:

Public Agency & Schools Reference Guide

<http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/er-pubs/manuals/pas-ref-guide.xml>

State Reference Guide

<http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/er-pubs/manuals/state-ref-guide.xml>

Employment after Retirement (Member publication 33)

<http://www.calpers.ca.gov/eip-docs/about/pubs/member/employment-after-retire.pdf>

Reinstatement from Retirement (Member publication 37)

<http://www.calpers.ca.gov/eip-docs/about/pubs/member/reinstatement-retirement.pdf>

CalPERS Benefit Services Division for post-retirement employment questions only:

Email: BNSD_Post_Retirement_Administration@calpers.ca.gov

Fax: (916) 795-0701