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Circular Letter

November 17, 2016

TO: **ALL CALPERS EMPLOYERS**

SUBJECT: **REQUIREMENTS FOR WORKING AFTER DISABILITY RETIREMENT
FOR A CALPERS EMPLOYER**

The purpose of this Circular Letter is to inform employers of the requirements for working after disability retirement for a CalPERS employer.

Government Code (G.C.) sections 7522.56, 7522.57, 21202, 21220, 21220.5, 21221(h), 21224, 21227, 21229, 21231 and 21232, provide the requirements for employment of a CalPERS retiree. A CalPERS disability/industrial disability retiree may work for a CalPERS employer, i.e., an employer who contracts with CalPERS for retirement benefits or a state agency, either in a retired annuitant position or in a permanent position with certain restrictions.

Requirements for Working as a Retired Annuitant

A retired annuitant position does not require CalPERS pre-approval; however, the position must be significantly different from the position which a retiree retired. The retired annuitant position should not include duties or activities that the retiree was previously restricted from performing at the time of his/her retirement.

1. Wait Period for Retirees

To be eligible for employment as a retired annuitant, all retirees must meet the following requirements to be eligible to work for a CalPERS employer:

- A. The bona fide separation requirement if younger than normal retirement age on retirement date.
- B. The 180-day wait period requirement or an allowable exception.

A. Bona Fide Separation Requirement

This bona fide separation in service is required of CalPERS by the Internal Revenue Code (IRC) to maintain our federal tax-qualified status. The only exception to the 60 calendar day separation is when a declared emergency as provided in G.C. section 8558 requires the employment of the retiree.

When the retiree is under his/her “normal retirement age” on the retirement date, employment cannot begin, even if an exception to the 180-day wait period applies, unless both of the following conditions are met:

- There is no verbal or written agreement to return to work, either as a retired annuitant or in a position under G.C. section 21232, between the member and the employer before the member retires, and
- There is a termination of employment (separation in service) for 60 calendar days between the retirement date and the date the retiree’s employment will begin.

B. 180-Day Wait Period Requirement

All employees retired January 1, 2013 and later must serve a 180-day wait period between the retirement date and the first day of post retirement employment. There are certain exceptions to this wait period. Please refer to the [Public Agency & Schools Reference Guide](#) or the [State Reference Guide](#) online for details and sample resolutions.

2. Types of Retired Annuitant Appointments

There are two types of retired annuitant appointments for public agency and school employers, “extra help” and “vacant position”. The retired annuitant employment requirements are the same for both. There are additional requirements for the vacant position appointment.

A. Extra Help Appointments:

- Limited Duration Work: The retiree has the skills needed to perform work of limited duration or the employment is needed during an emergency to prevent stoppage of public business.
- 960 Hour per Fiscal Year Limit: A retired annuitant can work no more than 960 hours in a fiscal year, July 1 - June 30, for employment with all CalPERS employers combined. There is no exception to this limit. The retiree and employer have equal responsibility to track the hours worked.
 - A CSU academic retiree may be employed in any fiscal year as a member of the CSU academic staff in a retired annuitant position not to exceed 960 hours for all employers or 50 percent of the hours the member was employed during the last fiscal year of service prior to retirement, whichever is less (G.C. sections 7522.56 and 21227).
- Pay Rate Only Compensation:
 - Extra Help Positions: the retiree can be paid no more than the maximum monthly base salary paid to other employees performing comparable duties as listed on the employer’s publicly available pay schedule divided by 173.333 to equal an hourly rate.
 - Vacant Position Appointments: the retiree can be paid no more than the maximum monthly base salary paid to other employees performing comparable duties as listed on the employer’s publicly available pay schedule for the vacant position divided by 173.333 to equal an hourly rate.

- **No Benefits, Other Compensation:** The retiree cannot receive any benefit, incentive, compensation in lieu of benefits, or be paid any other form of compensation in addition to the hourly pay rate. There are no exceptions.
- **No Retirement Contributions:** No retirement contributions are collected or paid for employed retirees. Only active members pay contributions.
- **Payroll Reporting** (for Public Agencies and Schools only): All retirees hired as retired annuitants must be enrolled in the CalPERS system and their payroll must be reported. See the "Payroll Reporting, Retired Annuitants" section of the Public Agency & Schools Reference Guide for information.

B. Vacant Position Appointments:

- **All of the Extra Help Appointments retired annuitant requirements above apply to Vacant Position Appointments.** A retiree can be appointed once as an interim or acting employee by the governing body of the employer to a vacant position during recruitment for a permanent replacement. This recruitment must be active and in place before the retiree is appointed. (G.C. sections 7522.56 and 21221(h)).

3. Unemployment Insurance Benefits And Retired Annuitant Employment

California law prohibits the reappointment of a retired annuitant by a CalPERS employer if, during the 12-month period prior to reappointment, the retiree received unemployment insurance compensation for prior retired annuitant employment with any public employer.

A retiree shall certify in writing to the employer upon accepting an offer of post-retirement employment that he or she is in compliance with this requirement.

Employers may require retirees to provide a current Unemployment Insurance Benefit (UIB) printout from the Employment Development Department (EDD) indicating whether or not he/she has collected unemployment insurance within the last 12 months to verify compliance. Please refer to the Public Agency & Schools Reference Guide or the State Reference Guide online for detail.

If a currently employed retiree is discovered to have received unemployment insurance compensation based on prior retired annuitant employment, the current employment must be terminated on the last day of the current pay period and the retiree shall not be eligible for reappointment by a CalPERS employer for 12 months following the termination of the current employment. A violation of this provision will not result in reinstatement from retirement, i.e., termination of retirement (G.C. Section 7522.56 (e) and 21224.)

Special Appointments - Retired Annuitant Requirements Do Not Apply

Information remains the same. Please refer to the [Public Agency & Schools Reference Guide](#) or the [State Reference Guide](#) online for detailed information.

Eligibility to Work for a CalPERS Employer in a Permanent Capacity after Disability Retirement

To be eligible for employment, a retiree must first meet the following requirements:

- The bona fide separation requirement, if applicable
- The 180-day wait period requirement or an allowable exception
- No receipt of unemployment insurance payments for previous retired annuitant employment 12 months before the appointment
- State Employer Civil Service Eligibility for employment with a state agency employer

CalPERS pre-approval is required for working in a permanent position (full-time or part-time) for a CalPERS employer without reinstatement. Such employment cannot begin prior to the Board's approval. The employment must meet the requirement in G.C. section 21232. In addition, the position should not include duties or activities that the retiree was previously restricted from performing at the time of his/her retirement. A retiree who is pre-approved to work under G.C. section 21232 shall not be concurrently employed as a retired annuitant. Violation of any of these requirements will result in reinstatement from disability/industrial disability retirement per G.C. sections 21220 & 21202.

G.C. section 21232 states, "On and after January 1, 2013, a person who has retired for disability and has not attained the mandatory age for retirement for persons in the employment in which he or she will be employed, and whom the board finds is not disabled for that employment, may be so employed by any employer without reinstatement from retirement if the position is not the position from which this person retired or a position in the same member classification. The person's disability retirement pension shall be reduced during this employment to an amount that, when added to the compensation received, equals the maximum compensation earnable by a person holding the position that he or she held at the time of retirement. This employment shall terminate upon the person's attainment of the mandatory retirement age for persons in that employment. A person employed under this section shall not be concurrently employed under this article."

Upon approval of the re-employment, the employer is required to enroll the retiree in my|CalPERS system. Public Agencies and schools are required to report payroll in my|CalPERS system. No retirement contributions are collected or paid for employed retirees. Only active members pay contributions. The retiree will be required to submit a copy of their first paystub and a copy of their W-2 annually, in January to CalPERS, as the disability retirement pension is subject to an earnings limit for as long as the employment continues.

If the retiree is to be promoted, demoted, lateral transferred, reclassified, changes job location, restarts a previously approved position or changes to a different employer, a new re-employment approval must be obtained prior to the position change, or the retiree may be subject to retroactive reinstatement from disability/industrial disability retirement and be liable for reimbursement of any retirement allowance paid.

For required CalPERS pre-approval documents please refer to the [Public Agency & Schools Reference Guide](#) or the [State Reference Guide](#) online.

Termination of Retirement Due To Unlawful Employment

Employers and retirees have equal responsibility to ensure any post-retirement employment is lawful. Employment that violates any of the retired annuitant requirements or the section 21232 requirements is unlawful employment. Unlawful employment results in reinstatement from retirement, i.e., termination of the retiree's monthly retirement allowance and any other post-retirement benefit.

When reinstated due to unlawful employment, the retiree is required to reimburse CalPERS for the retirement allowance received during the period of unlawful employment. Upon enrollment into active membership, the employee will pay member contributions plus interest to the employer for the period of unlawful employment. The employer will pay retroactive employer contributions plus interest and submit the member contributions thereby crediting the employee with service credit for the period of unlawful employment.

Independent Contractor Employment And Employment through a Third-Party Employer

Information remains the same. Please refer to the [Public Agency & Schools Reference Guide](#) or the [State Reference Guide](#) online for detailed information.

Other Resources

The Public Agency & Schools Reference Guide or the State Reference Guide, which is located on the [CalPERS website](#) contains information regarding requirements for working for other public retirement system or private sector after disability retirement.

If you have any questions, please call our CalPERS Customer Contact Center at **888 CalPERS** or **(888-225-7377)**.

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