



California Public Employees' Retirement System
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Legislation

Circular Letter

April 27, 2018

Circular Letter: 200-021-18

Distribution: VI, XII, XVI

To: All Contracting Public Agencies and School Employers
Subject: Assembly Bill 1487 added Section 20480 to the Government Code: Out-of-Class Appointment Limitations and Penalties

Purpose

The purpose of this Circular Letter is to inform California Public Employees' Retirement System (CalPERS) contracted employers of Assembly Bill (AB) 1487 that became effective January 1, 2018. AB 1487 adds Government (Gov.) Code section 20480 which prohibits an out-of-class appointment by a contracting agency or school employer with employees serving a limited term (LT) appointment in a vacant position from exceeding 960 hours worked within each fiscal year (FY). This pertains to Classic and New Members (Public Employees' Pension Reform Act).

Employer Responsibilities

Each employer is responsible for the following:

- Track out-of-class hours worked in each vacant position per FY.
- Report hours worked in vacant position(s) to CalPERS by July 30. Until we make system enhancements to allow online reporting, use the Out-of-Class Appointment Employer Certification form to submit the required information to the Employer Account Management Division.
- Make timely payments for penalties generated in accordance to Gov. Code section 20480.
- Ensure the out-of-class appointment during the LT duration is pursuant to a collective bargaining agreement or a publicly available pay schedule.

Letters to Employers

CalPERS will mail up to two (2) notification letters to each employer beginning June 2018.

| Letter | When | What |
|---------------|-------------------------------|--|
| Annual Notice | Within the month of June | The notice provides the employer with a reminder of the mandatory requirement to report the number of hours an out-of-class employee has worked in a vacant upgraded position which is due by July 30. |
| Second Notice | Within the month of September | The notice informs employers that CalPERS has not received their Out-of-Class Appointment Employer Certification form. |

Notification letters will be mailed to the employer's preferred address on file. Employers must provide the required information by submitting Out-of-Class Appointment Employer Certification form to CalPERS.

Failure to do so may result in:

- Penalties as outlined in Gov. Code section 20480.
- Notification to the Office of Audit Services to initiate an audit of the employer's records.

Additional Information

Definition of Out-of-class Appointment

Gov. Code section 20480 of the Public Employees' Retirement Law (PERL) defines an "out-of-class appointment" to mean an appointment to an upgraded position or higher classification by an employer or governing board or body in a vacant position for a limited duration.

For purposes of this section, a "vacant position" refers to a position that is vacant during recruitment for a permanent appointment. A vacant position does not refer to a position that is temporarily available due to another employee's leave of absence.

Penalties

Employers who violate this provision must make payments to CalPERS equal to three times the amount of money for the difference between the compensation paid for the out-of-class

appointment and the compensation paid and reported to the system for the member's permanent position. The penalty shall be applied for the entire period(s) the member serves in an out-of-class appointment. In addition, the employer will be responsible for a fee of \$200 to cover administrative expenses.

These contributions are provided as reimbursement for administrative expenses only. Penalties paid to CalPERS are not normal contributions or additional contributions that would be credited to a member's individual account. The member shall bear no liability, obligation, or expense as a result of the unlawful actions of the employer with respect to Gov. Code section 20480.

Additional Resources

To view California Gov. Code section 20480 in its entirety, go to leginfo.legislature.ca.gov.

Questions

Any questions regarding this information should be directed to the CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

Renee Ostrander, Chief
Employer Account Management Division

Attachments: Out-of-Class Appointment Employer Certification