



California Public Employees' Retirement System  
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## Membership

# Circular Letter

January 9, 2019

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**To:** All CalPERS Employers  
**Subject:** Optional Members of CalPERS

### Purpose

The purpose of this Circular Letter is to provide the California Public Employees' Retirement System (CalPERS) agencies and eligible members with additional resources regarding optional membership. A guide has been created for eligible optional members, which will clarify the essential details of optional membership.

The California Public Employees' Retirement Law (PERL) provides optional membership rights for certain elected and appointed officers. Optional members are excluded from membership unless the officer files a written election to become a CalPERS member. Optional members are defined in California Government (Gov.) Code sections 20320 – 20325 of the PERL.

### Optional Member Guide

CalPERS has created an additional resource for eligible optional members, titled Optional Member Guide. Agencies are required to provide the Optional Member Guide to eligible optional members with the appropriate Election of Optional Membership form. The Optional Member Guide provides additional information regarding the requirements, benefits, and restrictions of electing CalPERS membership.

## Types of Optional Members

The four types of optional members and the appropriate election forms are explained below:

Optional Member Type	Explanation of Type	Corresponding Gov. Code	Applicable Optional Membership Form
State Appointees	A person directly appointed by the governor, without nomination of any officer or board	Gov. Code section 20320	<a href="#">my CalPERS 0842</a>
Elective Officers	<p>A person such as a city council member, county board of supervisor member, and city clerk. Three criteria that must be met to make an optional member election are:</p> <ul style="list-style-type: none"> <li>• Must be an officer of the city or county</li> <li>• Must be elected or appointed to office</li> <li>• Must have a fixed term of office</li> </ul>	Gov. Code section 20322	<a href="#">my CalPERS 0841</a>
Legislative Employees	A person of the Senate or the Assembly whose salaries are paid from the operating funds of the Senate or the Assembly	Gov. Code section 20324	<a href="#">my CalPERS 0840</a>
Part-time Employees	A person who works for a public agency or school whose respective resolution or contract contains language allowing part- time employees that work less than a qualifying time base to elect “optional” membership	Gov. Code section 20325	<a href="#">my CalPERS 0843</a>

## **Agency's Responsibility**

It is the agency's responsibility on the effective date into the position eligible for optional membership to:

- Discuss the option of electing CalPERS membership with the eligible Optional Member.
- Provide the optional member with the Optional Member Guide and the appropriate election form which can be downloaded from the CalPERS website at [www.calpers.ca.gov](http://www.calpers.ca.gov).

If the optional member elects CalPERS membership, upon receipt of the signed election form:

- The agency must enroll the optional member into CalPERS membership submitting the original election form to CalPERS. The agency should also maintain a copy of the election for their records. The membership enrollment date for the optional member appointment is the date the election form is received and filed with CalPERS.
- The form should be uploaded when the appointment is created in my|CalPERS. Uploading the form is the preferred method to ensure timely enrollment. If the agency needs assistance uploading the form, contact CalPERS at [memberelectionteam@calpers.ca.gov](mailto:memberelectionteam@calpers.ca.gov). If the form is received after the date the agency makes the appointment effective, CalPERS may be required to update the optional member's enrollment eligibility date to the date when the election form was received and filed with CalPERS.
- The optional member's payroll and contributions should be reported effective the first day of the member's enrollment eligibility date.

If the optional member does not elect CalPERS membership on the effective date into the position eligible for optional membership, the agency must:

- Document the optional member was informed of their option to elect CalPERS membership and chose to decline in their personnel file. This documentation should be signed and dated by the agency and eligible optional member. Without proper documentation the agency will be unable to dispute if the member later claims to have not been given the right to elect.

## **Public Employees' Retirement Law (PERL) Exclusions**

Since July 1, 1994, the law dictates that certain elected or appointed officers who were formally eligible for optional membership may now be excluded from electing CalPERS membership entirely. Those excluded are elected or appointed officers of a county superintendent of schools, school district, or community college district, or of a contracting agency, who serve on public commissions, boards, councils, or similar legislative or administrative bodies (e.g., water districts, sanitation districts, redevelopment agencies, transportation commissions, etc.).

In addition to the exclusion, the agency is responsible to report only compensation allowable under the PERL for optional members. Gov. Code section 20630 states in part that

“compensation” means the remuneration paid for the member’s services performed during normal working hours. Gov. Code section 20636 defines “payrate” as a part of “compensation earnable” and more specifically, the normal monthly rate of pay or base pay of the member paid in cash for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Compensation earned for employment explicitly excluded by the PERL should not be reported to CalPERS. This includes compensation for overtime as defined in Gov. Code section 20635. For this part, overtime is the aggregate service performed by an employee more than the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid. Regarding optional members, the compensation received for duties in conjunction with excluded membership elections or appointments would either be considered outside of a member’s normal full-time duties or solely for duties attributable to elected or appointed officer positions that are excluded from membership. Additionally, contributions reported to CalPERS in association to special compensation should meet the requirements set forth by the California Code of Regulations 571 and 571.1 which provides an exclusive list that identifies and defines special compensation items for members employed by a contracting agency and/or school employer.

### **Contract Exclusions**

A public agency may have contracted with CalPERS to exclude only the members of the governing board. Optional members who are excluded by an agency’s CalPERS retirement contract remain excluded from electing CalPERS membership even if a signed election form is received by CalPERS.

### **Additional Resources**

For more information on optional members, refer to the appropriate reference guides, located on the CalPERS website under Forms and Publications at [www.calpers.ca.gov](http://www.calpers.ca.gov).

### **Questions**

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

Renee Ostrander, Chief  
Employer Account Management Division

**Attachment:** Optional Member Guide