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Announcements

Circular Letter

September 13, 2021

Circular Letter: 200-056-21

Distribution: IV, V, VI, X, XII, XVI

To: All CalPERS Employers
Subject: Governor's Executive Order N-12-21

Purpose

The purpose of this Circular Letter is to inform you of Executive Order N-12-21, which suspends Government (Gov.) Code section 7522.56(f), the 180-day break in service requirement, for CalPERS retirees seeking employment as a retired annuitant with a CalPERS employer to ensure adequate staffing in response to COVID-19, until further notice.

Background

On August 16, 2021, Governor Gavin Newsom issued Executive Order N-12-21, which amended some of the previously reinstated working after retirement rules for those retired annuitants employed to address the rising case rates caused by the COVID-19 delta variant to ensure adequate staffing.

Summary of Impacts

Executive Order N-12-21 is the third Executive Order issued by the governor providing direction on the hiring of retired annuitants for ensuring adequate staffing for COVID-19. The following suspensions are in effect:

- 960-work hour per fiscal year limit
- Retirees employed in vacant positions under Gov. Code section 21221(h) can only be appointed to the position once
- 60-day bona fide separation in service

- 180-day wait period after retirement

However, note the following post-retirement employment requirement continues to be in effect (after being reinstated by Executive Order N-08-21, effective July 1, 2021):

- If a retirement incentive was received, retirees must wait 180 days before returning to work.

180-Day Wait Period Exception

Under Executive Order N-25-20, the 180-day break in service requirement under Gov. Code section 7522.56(f) and (g) were suspended for retired annuitants hired to ensure adequate staffing during the state of emergency. Executive Order N-08-21 reinstated these requirements. The most recent Executive Order N-12-21 suspends the 180-day wait requirement again for appointments that begin on or after July 1, 2021. If a retiree is needed to return to work prior to waiting 180 days from their retirement date to ensure adequate staffing, then the retiree can return to work as part of Executive Order N-12-21.

For state agencies, the director of the California Department of Human Resources (CalHR) must be notified of any individual employed pursuant to these waivers. Notification should be emailed to [CalHR's California State of Emergency mailbox](#). Public agencies and schools must notify CalPERS of any individual employed pursuant to these waivers. Notification should be emailed to [CalPERS' Executive Order Review mailbox](#).

For retired annuitant appointments that begin on or after July 1, 2021, retirees that received a retirement incentive must wait 180 days prior to returning to work as a retired annuitant with no exceptions. Executive Order N-12-21 did not lift this requirement.

Work Hour Limitation

On March 4, 2020, the governor declared a statewide state of emergency due to the COVID-19 pandemic. The governor issued Executive Order N-25-20 to further enhance California's ability to respond to COVID-19. Consistent with applicable federal law, and to ensure adequate state staffing to expedite emergency response and recovery, the work hour limitations under Gov. Code section 7522.56(d) were suspended.

The suspension of the work hour limitation is still in effect. Any hours worked by a retired annuitant to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal year. The work hour limitations for retired annuitants are suspended from the date the state of emergency was declared until further notice.

Appointment to Vacant Positions

On December 14, 2020, the governor signed into effect Executive Order N-84-20. Paragraph four of this order allowed for the suspension of the 960-hour limitation under Gov. Code section 21221(h). Along with the suspension of the hours, this order also allows for retirees to be appointed more than once to the same vacancy under Gov. Code section 21221(h). This portion of the order will remain in effect until further notice.

Bona Fide Separation

The suspension of the 60-day separation in service is still in effect. Under subdivision (c) of section 586.2 of Title 2 of the California Code of Regulations (CCR), the declaration of a state of emergency exempts retired annuitants from the 60-day separation in service requirement under subdivision (a)(2) of CCR section 586.2. However, the prohibition under subdivision (a)(1) of CCR section 586.2 on any predetermined agreement between an employer and an impending retiree who has not attained normal retirement age continues to remain in effect consistent with federal law.

Continued Compliance

Agencies must continue to enroll and report retired annuitants to CalPERS. The remaining working after retirement provisions in Gov. Code sections 21221(h), 21224(a), and 7522.56(e) will continue to apply:

- Compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate.
- A retired annuitant shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

CalPERS will continue to monitor the work hours for retired annuitants and send communication to confirm when a violation is found and whether it complies with working after retirement policies.

Questions

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

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