

# Understanding Health into Retirement for Specialized Categories of State Employees

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# Background

There are various eligibility and vesting statutes contained in the Public Employees' Medical and Hospital Care Act (PEMHCA) that govern State retiree health care coverage. There are differences among four categories of State employees (outlined in more detail below). Eligibility and vesting requirements vary depending upon an individual's unique employment history; therefore, generalizations should be avoided. State employees may be subject to different requirements based on differences in appointment types, first State hire date, employment separation and retirement dates, and years of credited service. It is important to evaluate each employee's employment history to determine if and how eligibility and vesting statutes apply.

## Introduction

CalPERS retiree health care coverage is determined by answering these two questions, in the following order:

1. Is an individual eligible for retiree health care coverage?
2. If an individual is eligible for retiree health care coverage, are they entitled to a State contribution, and if so, what percentage?

## State Employee Categories

State employees fall into one of the following four categories:

### Civil Service Employee:

- A rank-and-file employee is one who is covered by the Dills Act and defined in Gov. Code 3513(c).
- An excluded State employee (i.e., manager, supervisor, confidential employee, etc.) is referred to in PEMHCA as someone who is "excluded from the definition of State employee in subdivision (c) of section 3513..."

### Exempt Employees:

- An employee exempt from civil service pursuant to subdivision (a), (c), (f), or (g) of Section 4 of Article VII of the California Constitution, or an Exempt Employee of the Attorney General or Legislative Counsel appointed pursuant to subdivision (m) of Section 4 of Article VII of the California Constitution. (Gov. Code 22774)

## Employees of the Legislature:

- An employee of the Senate or the Assembly, or the respective committees thereof, whose salaries or wages are paid from the Senate Operating Fund or the Assembly Operating Fund or the Operating Funds of the Assembly and Senate. (Gov. Code 20324)
- Legislative Employees are considered Exempt Employees, pursuant to subdivision (a) of section 4 of Article VII of the California Constitution. (Gov. Code 22774)

## Members of the Legislature:<sup>1</sup>

- Member of the Assembly or a Member of the Senate, an elective officer of the State whose office is provided by the Constitution, the Insurance Commissioner, or a legislative statutory officer. (Gov. Code 9351.3)

## Eligibility

Only “annuitants” as defined in PEMHCA are eligible for CalPERS health benefits into retirement.

Therefore, an individual’s last position shall determine which criteria must be met in order to be eligible for CalPERS health benefits in retirement.

Gov. Code Section 22760 contains multiple definitions of the term annuitant; however, an individual need only satisfy one of these definitions to qualify as an annuitant and be eligible for CalPERS health benefits in retirement.

- The broadest definition of an annuitant, and applicable to all employee categories, is defined in Gov. Code 22760(a). Generally, it defines an annuitant as a person that:
  - Retires within 120 days from the date of permanent separation from employment; and
  - Receives a retirement allowance under any State or University of California retirement system to which the State was a contributing party.
- Specialized categories of State employees (i.e., Exempt Employees, Members of the Legislature and elective officers) are further defined in Gov. Code 22760(g) and (f).
  - To qualify as an annuitant under these specialized definitions an individual must hold that office, appointment or position at the time of separation.
  - These definitions should be read carefully as all criteria must be satisfied to meet the definition of an annuitant, such as minimum credited service credit, age requirements, and permanent separation dates.

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<sup>1</sup> The Political Reform Act of 1990 (Prop 130) was added to section 4.5 of article IV of the State Constitution and applies to Members of the Assembly or Members of the Senate, who first assumed office on or after November 1, 1990. These Members of the Legislature do not qualify as an annuitant and would not be entitled to retiree health coverage.

# State Contribution (Vesting)

For State employees, “vesting” refers to the amount of service credit an individual must earn with the State to be eligible to receive employer contributions toward the cost of the monthly health premium during retirement. Bargaining unit negotiations may affect the State’s vesting requirements. State vesting requirements do not apply to employees of the Legislature or those on disability retirement.

State employees who meet the definition of an annuitant and are eligible to enroll in the CalPERS health program as a retiree, may or may not receive a State contribution toward the cost of their health coverage.

- The amount of the State contribution will depend on whether the individual is subject to a vesting statute.
  - The contribution amount is determined by a formula set by law.
  - The state contribution may not cover the entire cost of the health plan premiums; the member is responsible for any remaining balance.
- An individual’s last position held at the time of separation shall determine whether a vesting statute applies.
  - If a vesting statute applies, then the individual’s first State hire date and bargaining unit determine which vesting schedule to use.
  - Refer to Gov. Code Sections 22873 through 22875 for a complete listing of vesting statutes.

## Continued Coverage While Separated but Not Yet Retired

Special statutory provisions allow various Members of the Legislature and Exempt Employees to continue their CalPERS health coverage through direct pay after permanently separating from the State, even though they are not yet retired and receiving a retirement allowance.

- To be eligible for these provisions, individuals in these specialized categories must meet the criteria set forth in Gov. Code section 22815 or 22816, such as minimum credited service credit, age requirements, and permanent separation dates.
  - For individuals more than 10 years younger than their minimum retirement age, direct pay is required to maintain eligibility for retiree health coverage, pursuant to Gov. Code section 22815. (e.g. minimum retirement age is 50, individual separates before age 40)
  - For individuals less than 10 years younger or older than their minimum retirement age, direct pay is an option available to them. It is not necessary to enroll in direct pay in order

to maintain eligibility for retiree health coverage, pursuant to Gov. Code 22816. (e.g. minimum retirement age is 50, individual separates between ages 40 and 60)

- An individual must hold the specialized office, appointment or position at the time of separation and elect to continue coverage within 60 days of separation.
- Individuals assume the total cost of the health premiums without receiving an employer contribution. They will also pay an additional 2 percent of the premium amount to cover administrative expenses.
- Individuals who qualify for and elect to continue coverage but later reinstate to another CalPERS health eligible position with the State or a public agency, are not considered to have permanently separated. Eligibility for continued coverage under Gov. Code section 22815 or 22816 under these circumstances would cease.

## Summary

Eligibility and vesting determinations are driven by a variety of factors such as first date of employment, position or status held in the last appointment prior to retirement, and amount of accrued service credit. These factors may change over the course of an individual's career. Careful review of statutory provisions cited is recommended and understanding that future positions or appointments may impact your eligibility and vesting requirements for health benefits.

## Contact Information

For questions regarding your health eligibility and vesting requirements, please feel free to contact us at **888 CalPERS** or **(888-225-7377)**.

## Scenarios

The following examples are designed to illustrate how the eligibility and vesting requirements vary based on an individual's employment history and circumstances:

### Scenario 1

Bill is hired as an employee of the Legislature on February 1, 1987 at age 50. As an employee of the Legislature, he is exempt from civil service. Bill works in that position until 1995, at which time he transfers to a civil service position with the Department X. Bill permanently separates from that civil service position on March 1, 1998, with 11 years of service credit at age 61. Bill retires the next day and begins receiving a CalPERS retirement warrant. Is Bill eligible for retiree health coverage? Is he entitled to a State contribution?

## Eligibility

Yes, Bill retired within 120 days of separation and is receiving a retirement allowance from a State retirement system (CalPERS). He satisfied the definition of an annuitant as set forth in section 22760(a). Bill did not satisfy the definition of an “annuitant” as set forth in section 22760(g), as he was not an Exempt Employee at the time of separation.

## State Contribution

Bill’s last appointment was with the Department X in a civil service position. Based on his first State hire date of February 1, 1987, he is subject to Gov. Code 22873 and would need 10 years of credited State service to receive the full State contribution. Bill retired with 11 years of service credit and is eligible for the full State contribution.

## Scenario 2

Sally is appointed to an exempt position in March 2006 by the Governor at age 46. Sally works in that position until January 2018, at which time Sally permanently separates from the State with 12 years of service credit at age 58. Two years later, Sally decides to retire effective March 1, 2020. Is Sally eligible for retiree health coverage? Is she entitled to a State contribution?

## Eligibility

Yes, Sally is an annuitant because she satisfies all the conditions set forth in section 22760(g). Sally does not satisfy the definition of an annuitant as set forth in section 22760(a) because she did not retire within 120 days of separation.

## State Contribution

Sally’s last appointment was as an Exempt Employee. Based on her first hired date of March 2006, she is subject to Gov. Code 22875 and would need 20 years of credited State service to receive the full State contribution. Sally retired with 12 years of service credit and is eligible for 60 percent of the State contribution.

## Scenario 3

Ralph is appointed to an exempt position in 2003 by the Governor at age 47. Ralph works in that position until 2010, at which time he permanently separates from State service with 7 years of service credit at age 54. Ralph does not retire at that time and is not eligible to continue his coverage after separation pursuant to Gov. Code 22816 as he does not have the minimum number of years of service credit required. Ten years later, Ralph retires in 2020 and begins receiving a retirement warrant from CalPERS. Is Ralph eligible for retiree health coverage? Is he entitled to a State contribution?

## Eligibility

No. Ralph does not satisfy any of the definitions of an annuitant. Ralph is not an annuitant under section 22760(a) because he did not retiree within 120 days of separation. He is also not an annuitant under section 22760(g) because he does not have at least 10 years of credited State service, despite having 7 years as an Exempt Employee.

## State Contribution

Not applicable, as Ralph is not eligible for retiree health benefits.

# Appendix - Relevant Government Codes

Below are the applicable eligibility statutes contained in the PEMHCA that govern State retiree health care coverage discussed in this document. Refer to PEMHCA for a complete listing of all eligibility and vesting statutes.

## Gov. Code 22760 – “Annuitant”

(a) A person, other than a National Guard member defined in Section 20380.5, who has retired within 120 days of separation from employment and who receives a retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(f) A Member of the Legislature or an elective officer of the state whose office is provided by the California Constitution, who has at least eight years of credited service, and who meets the following conditions:

1. Permanently separates from state service on or after January 1, 1988, and not more than 10 years before or 10 years after his or her minimum age for service retirement, or is an inactive member of the Legislators’ Retirement System pursuant to Section 9355.2.
2. Receives a retirement allowance under a state retirement system supported in whole or in part by state funds other than the University of California Retirement System.

(g) An exempt employee who meets all of the following conditions:

1. Has at least 10 years of credited state service that includes at least 2 years of credited service while an exempt employee.
2. Permanently separates from state service on or after January 1, 1988, and not more than 10 years before or 10 years after his or her minimum age for service retirement.
3. Receives a retirement allowance under a state retirement system supported in whole or in part by state funds other than the University of California Retirement System.



## Gov. Code 22815 – Inactive Exempt Employees and Legislators (Separated Before Age 40)

- (a) The following persons are eligible for enrollment as provided in this section:
  - (1) A Member of the Legislature or an elective officer of the state whose office is provided by the California Constitution who meets all of the following conditions:
    - (A) Has at least eight years of credited service.
    - (B) Permanently separates from state service on or after January 1, 1988, and more than 10 years before his or her minimum age for service retirement, or is an inactive member of the Legislators' Retirement System pursuant to Section 9355.2.
    - (C) Elects to remain a member of a state retirement system supported in whole or in part by state funds, other than the University of California Retirement System.
  - (2) An exempt employee who meets all of the following conditions:
    - (A) Has at least 10 years of credited state service that includes at least two years of credited service while an exempt employee.
    - (B) Permanently separates from state service on or after January 1, 1988, and more than 10 years before his or her minimum age for service retirement.
    - (C) Elects to remain a member of a state retirement system supported in whole or in part by state funds, other than the University of California Retirement System.
- (b) During the period he or she is not yet receiving a retirement allowance, a person described by subdivision (a) may continue enrollment in a health benefit plan or dental care plan without discrimination as to premium rates or benefit coverage, upon assuming payment of the contributions otherwise required of the former employer on account of his or her enrollment and the employee contribution. The person shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Human Resources. An election to continue coverage under this section shall be made within 60 days of permanent separation.
- (c) A person who receives coverage pursuant to this subdivision, and subsequently terminates that coverage, may not be allowed to reenroll and may not enroll as an annuitant pursuant to subdivision (d).
- (d) Upon retirement and receipt of a retirement allowance, a person described in subdivision (b) may elect to continue enrollment in a health benefit plan or dental care plan without discrimination as to premium rates or benefit coverage, at which time the state shall assume payment of the employer contribution and the person shall thereafter be deemed an annuitant.
- (e) The board has no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

## Gov. Code 22816 – Inactive Exempt Employees and Legislators (Separated Between Ages 40 and 60)

- (a) A person who meets all of the criteria of an annuitant, as defined in subdivision (f) or (g) of Section 22760, other than the condition of receiving a retirement allowance under a retirement system supported in whole or in part by state funds, may continue enrollment in a health benefit plan or dental care plan provided to annuitants without discrimination as to premium rates or benefits coverage, upon assuming payment of the contributions otherwise required of the former employer on account of his or her enrollment and the employee contribution. The person shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Human Resources. An election to continue coverage under this section shall be made within 60 days of permanent separation.
- (b) A person who receives coverage pursuant to this subdivision who subsequently terminates that coverage may not reenroll. However, termination under this subdivision does not affect an annuitant's right under section 22817. The benefits authorized by section 22817 and this section are separate and distinct benefits.
- (c) The board has no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

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