

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (the Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to add section 574, "Definition of Full-Time Employment" under Article 4, Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR). By proposing this regulation in this Article, CalPERS seeks to explicitly define "full-time" employment.

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **April 13, 2018** and closing on **May 28, 2018** at 5:00 pm. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; Email at Regulation_coordinator@calpers.ca.gov or mailed to the following address:

Evan Bailey, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-3038

III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairment, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

V. AUTHORITY AND REFERENCE

The Board has the authority to take regulatory action under Government Code (GC) sections 20121 and 7522.02(j).

Reference citations: GC Sections 20305, 20635, 20635.1, 20636, 20636.1, 20967, and 7522.34.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Public Employees' Retirement Law uses such phrases as "full-time employment," "full-time employees," and "full-time basis" in certain Government Code sections relating to membership eligibility, overtime positions, compensation earnable, and pensionable compensation but does not define "full-time" except as it applies to certain school members in GC section 20636.1. By proposing this regulation, the Board seeks to explicitly define "full-time" employment and set forth related notification and exemption requirements that are applicable to contracting agencies. It is intended to provide clarity and uniformity for CalPERS, its members, contracting agencies, and other stakeholders to ensure consistent use of the term "full-time."

The Board previously set forth the requirements for full-time employment in Board resolutions. Most recently, on October 15, 1980, the Board approved a resolution that allows contracting agencies to set a "normal" work week for full-time employment and to allow the Board to establish a minimum and maximum range that it would consider as full-time employment for system purposes. In the resolution, the Board established 34 hours per calendar week, four working days per calendar week, and nine months per fiscal year as the minimum periods and 60 hours per calendar week and six working days per calendar week as the maximum periods which would be considered as full-time employment for system purposes. The Board resolution further provides that each contracting agency is to inform the Board of the normal work week periods which the contracting agency considers to be full-time and that such periods are to be established for all employees in the same group. If an employee's normal work week falls outside of that range, the Board resolution requires the contracting agency to submit a request to the Board for special consideration.

Currently, for purposes of determining compensation earnable, CalPERS considers work schedules which fall between 34 and 60 hours per week to be full-time employment, except that full-time employment for classified school members is set at 40 hours per week in accordance with GC section 20636.1. Exceptions that fall outside of the 34 to 60 hours per week range have been granted by the Board.

This proposed regulation would clarify CalPERS' definition of "full-time" employment as used in the Public Employees' Retirement Law for purposes of determining CalPERS membership eligibility in accordance with GC section 20305, reporting overtime positions in accordance with GC sections 20635 and 20635.1, determining compensation earnable in accordance with GC sections 20636 and 20636.1, and determining pensionable compensation in accordance with GC section 7522.34. The proposed regulation will maintain the minimum of 34 hours per calendar week, or the equivalent as determined by the Board, and will remove the upper limit of 60 hours per calendar week set by the 1980 Board resolution in order to give contracting agencies more flexibility to determine full-time employment for employees who may have a weekly schedule of greater than 60 hours per calendar week. The proposed regulation will continue to allow contracting agencies to determine what constitutes the normal work week for full-time employment for its employees provided that it is at least 34 hours per calendar week, or the equivalent as determined by the Board. For example, a normal work schedule consisting of sixty-eight hours for two calendar weeks may be determined to be full-time. If the contracting agency's definition of a normal work week for full-time employment is below 34 hours per work week, or the equivalent as determined by the Board, the proposed regulation will require the contracting agency to submit a written request to the Board for an exemption.

This proposed regulation is consistent with existing law. This proposed regulation will require contracting agencies to notify CalPERS of the normal work week periods which are considered full-time and will require that these periods be established for all employees in the same "group or class of employment" within the meaning of the Public Employees' Retirement Law. Currently, contracting agencies already notify CalPERS of what constitutes full-time employment for their normal work week schedules through the payroll reporting process; therefore, no additional reporting will be required from the contracting agencies. The proposed regulation will not apply to the extent it conflicts with a provision in the Public Employees' Retirement Law, such as the provision in GC section 20636.1 that states that full-time employment for classified school members is 40 hours per week.

Consistency Evaluation

CalPERS has evaluated and determined that the proposed regulations are not inconsistent, nor incompatible with existing State regulations. There are no other comparable existing State regulations pursuant to GC Section 11346.5, subdivision (a), paragraphs (3)(D).

Anticipated Benefit

CalPERS believes that adoption of this proposed regulation will provide clarity and uniformity for CalPERS, contracting agencies, the State, and CalPERS

members to ensure consistent use of the term “full-time.” Removing the upper limit of 60 hours per calendar week will allow contracting agencies more autonomy and flexibility in determining what constitutes full-time employment for employees with unique weekly and monthly schedules. The proposed regulation is consistent with the Public Employees’ Retirement Law and applicable federal laws, rules, and regulations regarding full-time employment. The regulation is reasonably necessary to clarify CalPERS’ interpretation of what is considered “full-time” employment for system purposes.

VII. PRE-NOTICE CONSULTATION WITH THE PUBLIC

The proposed regulation contains clarifying language regarding CalPERS’ interpretation of what is considered “full-time” employment for system purposes. Therefore, no pre-notice consultation was done with the public.

VIII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to CalPERS covered contracting agencies and CalPERS members.

IX. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose any mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will not result in any additional costs or savings to any State agency.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will not result in any costs on any local agency or school district.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose any nondiscretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action will not result in additional costs or savings in federal funding to the State.

- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. CalPERS relied upon the plain text of the statutes and the proposed regulation to make this determination.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because regulatory action only applies to CalPERS, CalPERS covered contracting agencies, and CalPERS members.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory action: (1) will not create or eliminate jobs within California; (2) will not create new businesses or eliminate existing businesses within California; (3) will not affect the expansion of businesses currently doing business within California; and (4) will not adversely impact the health and welfare of California residents because the proposed regulation serves only to provide CalPERS' interpretation of certain terms used in the Public Employees' Retirement Law and the Public Agency and Schools Reference Guide.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no effect on housing costs.
- J. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630:** There are no costs to any local agency or school district, which must be reimbursed in accordance with G.C. sections 17500 through 17630.

X. CONSIDERATION OF ALTERNATIVES

In accordance with G.C. section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned public hearing or during the written comment period.

XI. CONTACT PERSON

Please direct inquiries concerning the proposed regulatory action to:

Evan Bailey, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-3038

The backup contact for these inquiries is:

Anthony Martin, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-3038

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Evan Bailey, Regulation Coordinator, at the address provided.

XII. AVAILABILITY OF THE INITIAL STATEMENT OF REASON AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The entire rulemaking file is available for public inspection by contacting the Regulation Coordinator at the address shown in Section II. To date, the file consists of this notice, the Initial Statement of Reasons (ISOR) and the proposed text of the regulations. A copy of the proposed text and the ISOR is available at no charge by written request to the CalPERS Regulation Coordinator, at the address and phone number listed in Section II. The Final Statement of Reasons can be obtained once it has been prepared.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at www.calpers.ca.gov.

XIII. AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board may, on its own motion or at the recommendation of any interested person, amend the proposed text of the regulation after the public comment period ends.

If the Board amends its regulatory action, a comparison of the original proposed text and the amendments will be prepared for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulations. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed of the results of this regulatory action.

XIV. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the address shown in Section II.