Government (Gov.) Code section 20480
Out-of-Class Reporting Frequently Asked Questions

Q1: Under Gov. Code section 20480, what are employers required to track? How does the law impact language employers have within their MOU as it relates to out-of-class pay?

A1: Gov. Code section 20480 requires tracking of hours employees work in out-of-class appointments for contracted public agency and school employers. Out-of-class for this section of the law is defined as 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. If either of these requirements are not met (vacant and recruiting) then the position doesn't qualify as an appointment to track under the law.

In addition, Gov. Code section 20480 is specific to tracking total hours worked in an out-of-class position. It does not impact how compensation is paid to the employee or reported as pensionable compensation to CalPERS.

Q2: Under Gov. Code section 20480, when must the out-of-class hours be reported and what constitutes the total hours worked for an employee serving in an out-of-class appointment? Do the total hours include vacation/sick leave credits and/or overtime hours worked?

A2: The employer must track the total hours worked by an employee serving in an out-of-class appointment and report that service to CalPERS no later than 30 days following the end of each fiscal year. Since the hours worked are associated with services performed, the report includes all hours the employer compensated the employee. This includes time associated with leave (vacation or sick) as well as overtime hours worked.

Q3: Under Gov. Code section 20480, are we required to track total hours worked for an employee who receives a temporary promotion (i.e. limited term)?

A3: The employer must track the total hours worked if the position was vacant during a recruitment. If the employee received a temporary promotion into a position that wasn't actively recruited, the appointment would not qualify as a position which the employer must track and report total hours worked.

Q4: Does Gov. Code section 20480 define an active recruitment?

A4: Gov. Code section 20480 does not define an active recruitment. For this section, each employer shall defer to their organization's official policy or procedure for when a recruitment is initiated. Once the position has met the organization's requirements for recruitment, the employer must begin tracking hours worked for the out-of-class appointment.

Q5: When are employers required to submit out-of-class appointments that meet the specific requirements outlined in Gov. Code 20480?

A5: Employers must track the hours worked by an employee serving in an out-of-class appointment and report that service to CalPERS no later than 30 days following the end of each fiscal year. CalPERS fiscal year starts on July 1 and ends June 30. This information is due to CalPERS by July 30 each year.

Q6: Are we required to notify CalPERS if we don't have an employee who meets the requirements for tracking total hours worked in an out-of-class assignment?

A6: All employers are required to notify CalPERS within 30 days following the end of each fiscal year whether they have an out-of-class appointment to report or not. myICalPERS provides an efficient process for employers to self-verify either way within the system.

Q7: Will myICalPERS allow employers to track and report out-of-class hours worked via our regular payroll reporting process, similar to the process of tracking hours worked for retired annuitants?

A7: Gov. Code section 20480 is specific to tracking total hours worked for a qualifying out-of-class appointment. Since there isn't a pensionable compensation component, the records cannot be tied to regular payroll reporting.

Q8: For larger agencies, it may take additional time to manually enter each out-of-class record into myICalPERS before the reporting deadline. Does myICalPERS provide a process to verify and report records by submitting a file into the system?

A8: Employers have the option to report records for out-of-class appointments by uploading a .CSV file into myICalPERS. For information regarding the file specifications and requirements, refer to the *Reporting Out-of-Class Hours Worked* section of CalPERS' Employer's Technical Resources web page.

Q9: Are agencies who report on behalf of other districts required to create one report for each district or can they report all records within a single fiscal year report?

A9: Employers responsible as a parent organization for another division (i.e., child) under a shared PERS retirement contract (i.e. COE/District or County Agency/Superior Court) have the option to allow their division to report out-of-class records independently. They may also choose to include the division's out-of-class records within their own fiscal year report. myCalPERS will not allow a parent organization to create unique reports for each of their divisions under the context of the parent organization's myCalPERS account. Only one report may be submitted by an employer per fiscal year.

Q10 What happens if an out-of-class appointment exceeds 960 hours in a fiscal year?

A10: Employers who violate the total hours worked provision must pay three times the amount of the difference between the compensation paid for the out-of-class appointment and the compensation that otherwise may have been paid and reported to the system for the employee's permanent position, in accordance with a publicly available salary schedule. The penalty applies for the entire period the employee works in an out-of-class appointment. Refer to the answer in Q12 for an example of the penalty assessment.

In addition, the employer will be responsible for a fee of $200 to cover administrative expenses. Penalties paid to the system are not normal contributions or additional contributions typically credited to an employee's individual CalPERS retirement account. The employee bears no liability, obligation, or expense because of the unlawful actions of the employer.

Q11: An employee may serve in multiple out-of-class assignments throughout the fiscal year. Are we required to track all hours worked across the different assignments and report the hours accumulatively, or can we report separate appointments for each assignment? Is the 960-hour threshold per employee per fiscal year, or is it per each assignment per fiscal year?

A11: Gov. Code section 20480 is specific to a vacant position in recruitment. Each assignment is treated separately when tracking total hours worked. If an employee were assigned to multiple qualifying positions throughout the fiscal year, employers would report the total hours worked for each position as a separate record.

The out-of-class penalty will only be assessed once a specific position exceeds 960 hours worked. The penalty is not assessed on the accumulative total of hours worked across multiple out-of-class positions in a fiscal year.

Q12: How is the out-of-class penalty calculated once the position has exceeded 960 hours worked in a fiscal year?

A12: The penalty is calculated on the difference of member/employer contributions that would otherwise be paid to CalPERS if they stayed in their original position, compared to the member/employer contributions that may have been paid while working in an out-of-class position to CalPERS.

The following example illustrates how the penalty would be calculated:

Position prior to working out-of-class (Assistant City Manager)

Monthly Payrate: $8,000
Duration working out-of-class: 8 months (1,386 hours)
Earnings that would have been received for original position: $64,000
Member Contribution (7%) for earnings: $4,480
Employer Contribution (28%) for earnings: $17,920
Total Contributions: $22,400

Out-of-class position (City Manager)
Monthly Payrate: $8,000
Earnings reported to CalPERS for out-of-class position: $64,000
Additional Temporary Upgrade Pay paid but not reported to CalPERS: $3,200
Member Contribution (7%) if all compensation reported to CalPERS: $4,704
Employer Contribution (28%) if all compensation reported to CalPERS: $18,816
Total Contributions: $23,520

Penalty: ($23,520) – ($22,400) X 3 = $3,360

Q13: When is the out-of-class penalty assessed and how do we make a payment for the penalty?

A13: A penalty will be assessed on all appointments that exceed 960 hours within a fiscal year per each out-of-class assignment. In addition, the employer will incur a $200 administrative penalty for the fiscal year to cover administrative expenses. The $200 administrative penalty is applied against the reporting period, not for each violation.

Two separate receivables will be generated within the month of June following the reporting period. The first accounts for all out-of-class violation penalties. The second is the $200 administrative penalty. Employers are encouraged to pay these receivables timely using the same EFT payment process in place for paying their defined benefit contributions.

Q14: Where will the receivables generate if we report on behalf of other public agencies and/or school districts?

A14: The out-of-class receivables are generated to the employer's account that submitted the report. For example, if a public agency submits the out-of-class report on behalf of another public agency through the first agency's myICalPERS account, the receivables generate to that account if violations are found within the report.

If a county office of education submits a report via their myICalPERS account on behalf of their districts and themselves, then the receivables generate to the county office's account if violations are found within the report.

If a school district self-reports their out-of-class hours worked through their own myICalPERS account, then the receivables are generated to their account if violations are found within the report.

Q15: Are out-of-class receivables subject to the EFT mandate?

A15: Since the penalty and administration fee are not part of PERS retirement compensation reportable, the EFT mandate does not apply. CalPERS financial office still recommends all employers pay their receivable by EFT to ensure timely and accurate posting of payments and to avoid any potential interest penalties that may apply.