RESOURCES FOR HIRING RETIREES

See Circular Letter 200-002-14, Post Service Retirement Employment Requirements and the Employer Checklist for Hiring CalPERS Retirees for the specific employer guidelines. These publications are available on our CalPERS website at www.calpers.ca.gov.

RESOURCES FOR MEMBERS AND RETIREES

Advise your retiring employees and retirees to educate themselves before seeking post-retirement employment by reading our member publication Employment After Retirement (PUB 33), available through the Forms & Publications page on the CalPERS website at www.calpers.ca.gov.

CIVIL SERVICE ELIGIBILITY REQUIREMENT FOR RETIRED ANNUITANT EMPLOYMENT AND EMPLOYMENT UNDER G. C. SECTION 21232

CalPERS service retirees can only be lawfully employed in retired annuitant compliant positions. CalPERS disability retirees can be lawfully employed in retired annuitant positions or upon CalPERS' pre-approval be employed in permanent positions with certain restrictions. A state agency cannot hire a CalPERS retiree unless the retiree meets the Civil Service Act eligibility requirements to qualify as a state retired annuitant:

A CalPERS retired state civil service employee may be appointed as a retired annuitant to a position that is either (a) in the class in which the person had permanent or probationary status or a Career Executive Assignment (CEA) appointment at the time of retirement; or (b) in another class to which the person could have been permanently transferred, reinstated, or demoted at the time of retirement.

A CalPERS retiree who is not retired from state civil service, i.e. retired from a CalPERS public agency or school employer or a retired state employee exempt from civil service can only be appointed as a retired annuitant if he/she (a) qualifies for appointment under other civil service provisions such as emergency appointment, temporary authorization (TAU) appointment or (b) eligibility on a civil service employment list for the position.

For more information see the Personnel Management Policy and Procedures Manual pages 360.1 – 360.4 available from the California Department of Human Resources (CalHR).

EXEMPT FROM CIVIL SERVICE OR NON-TESTING POSITIONS: CalPERS retirees who are not civil service eligible to be hired as a state agency retired annuitant cannot be appointed to non-testing, exempt from civil service or any other state agency position without reinstatement from retirement, i.e., terminating their CalPERS retirement.

ELIGIBILITY TO WORK AFTER RETIREMENT

California retirement law and federal tax law provide specific restrictions for employment, without reinstatement from retirement, with an employer in the same public retirement system from which a retiree receives the benefit.
California retirement law and federal tax law provide specific restrictions for employment after retirement. Government Code (G.C.) sections 7522.56, 7522.57, 21202, 21220, 21220.5, 21221(h), 21224, 21227, 21229, 21231, and 21232 provide the requirements for employment of a CalPERS retiree. Section 7522.56 provides that a retired person cannot serve, be employed by, or be employed through a contract directly by a public employer in the same public retirement system from which the retiree receives benefits without reinstatement from retirement (i.e. termination of the retirement), except as permitted.

“Retired annuitant” is our general term for a CalPERS retiree employed by a CalPERS employer under the authority of G.C. sections 7522.56, 21221(h), 21224, 21227 and 21229.

**TERMINATION OF RETIREMENT DUE TO UNLAWFUL EMPLOYMENT**

Employers and retirees have equal responsibility to ensure any post-retirement employment is lawful. CalPERS service retirees can only be lawfully employed in retired annuitant compliant positions. CalPERS disability retirees can be lawfully employed in retired annuitant positions or upon CalPERS’ pre-approval be employed in permanent positions with certain restrictions.

Employment that violates any of the retired annuitant requirements or the G.C. section 21232 requirements for disability/industrial disability retirees is unlawful employment. Unlawful employment results in reinstatement from retirement for the retiree, i.e., termination of the retiree’s monthly retirement allowance and any other post-retirement benefit.

When reinstated for unlawful employment, the retiree is required to reimburse CalPERS for the retirement allowance received during the period of unlawful employment. Upon enrollment into active membership, the employee will pay member contributions plus interest to the employer for the period of unlawful employment. The employer will pay retroactive employer contributions plus interest and submit the member contributions thereby crediting the employee with service credit for the period of unlawful employment.

**SCREEN FOR RETIREE WHEN HIRING:**

CalPERS retirees employed by CalPERS employers are referred to as “retired annuitants”.

When interviewing potential employees, the employer should ensure they lawfully hire CalPERS retirees:

- Ask if the candidate is a CalPERS retiree and if so, to specify the type of retirement: service, disability, or industrial disability.

- Ensure the candidate is civil service eligible to be appointed as a retired annuitant. CalPERS retirees cannot be lawfully hired into positions exempt from civil service.

- If the candidate is a CalPERS service retiree and the position is not a retired annuitant position, inform the candidate that reinstatement from retirement (i.e., termination the CalPERS retirement and enrollment as an active employee) is required in order to be hired into the position. See Reinstatement from Retirement (Pub 37), for the voluntary reinstatement process.

- If the candidate is a CalPERS disability/industrial disability retiree and the position is a retired annuitant position, the employer will need to make sure the job duties must differ significantly from those required under the position from which the candidate retired. The position should not include duties or activities the candidate was previously restricted from performing at the time of his/her retirement. If the position is not a retired annuitant position, inform the candidate that CalPERS’ pre-
approval must be obtained before being hired. See the “Employment of a Disability/Industrial Disability Retiree” section of this guide.

**WAIT PERIODS FOR RETIRES**

To be eligible for employment as a retired annuitant, all retirees (both service and disability/industrial disability) must meet the following three requirements in order to work for a CalPERS state agency employer:

A. The 60 calendar day bona fide separation requirement if younger than normal retirement age on retirement date.

B. The 180-day wait period requirement or an allowable exception.

**RETIRED ANNUITANT VS PERMANENT EMPLOYMENT:** When retirees are hired into non-retired annuitant designated positions subject to CalPERS membership, they are unlawfully employed and subject to terminating their CalPERS retirement. When interviewing potential employees the employer should:

- Ask if the candidate is a CalPERS retiree and if so, to specify the type of retirement: service, disability, or industrial disability.

- If the candidate is a CalPERS service retiree and the position is not a retired annuitant position, inform the candidate that reinstatement from retirement (i.e., termination the CalPERS retirement and enrollment as an active employee) is required in order to be hired into the position. See Reinstatement from Retirement (Pub 37), for the voluntary reinstatement process.

**A. BONA FIDE SEPARATION IN SERVICE REQUIREMENT:**

The bona fide separation in service is required of CalPERS by Internal Revenue Code tax regulations in order to maintain our federal tax-qualified status. The only exception to the 60 calendar day separation is when a declared emergency as provided in G.C. section 8558 requires the employment of the retiree. (California Code of Regulations (CCR) sections 586-586.2 and G.C. 21220.5."

If when the retiree is under his/her “normal retirement age” at retirement on the retirement date, employment cannot begin, with a CalPERS employer is not allowed, even if an exception to the 180-day wait period applies, unless both of the following conditions are met:

1. There was no verbal or written agreement to return to work, either as a retired annuitant or in a position work in a position under G.C. section 21232, between the member and the employer before the member retired, and

2. There is a bona fide break in service of 60 calendar days There is a termination of employment (separation in service) for 60 calendar days between the retirement date and the date the retiree’s employment will begin.

“Normal retirement age” is the age named in the member’s retirement benefit formulas. For example, the normal retirement age for a 2% @ 55 retirement benefit formula is 55. If the member has more than one retirement benefit formula, then the “normal retirement age” is the highest (oldest) benefit formula age, even if the service in that formula was with a previous CalPERS employer and/or several years prior. Members can view all of their retirement formulas on their most recent or final Annual Member Statement, available online via their myCalPERS member self-service account, or mailed (if elected) each November.
Example: Joe Smith is a state miscellaneous member who retired June 30, 2012 at age 52, with 20 years of service. His retirement benefit formula is 2% at 55. Because he has not reached his normal retirement age of 55, he must have the bona fide separation in service. This means: (1) he and the employer must not have an agreement before he retires for him to return to work after his retirement, and (2) he must have a 60 calendar day separation between his retirement date and the first day of employment as a retired annuitant. (C.C.R. sections 586-586.2 and G.C. section 21220.5)

If the retiree is at or above has reached his/her normal retirement age, i.e., the oldest formula age on the retirement date, then this bona fide separation is not required.

B. 180-DAY WAIT PERIOD REQUIREMENT

All employees retired January 1, 2013 or later must serve a 180-day wait period between the retirement date and the first day of post-retirement employment. There are certain exceptions to this wait period as identified below.

NOTE:
None of the following exceptions apply if the retiree receives a Golden Handshake or any other retirement incentive (G.C. section 7522.56(f)).

The exceptions to the 180-day wait period for state agencies are California State Universities (CSU) are:

- **FIREFIGHTER OR PUBLIC SAFETY OFFICER:** The retiree is a firefighter or a public safety officer as defined in G.C. section 3301 (peace officer) who performs peace officer or firefighter retired annuitant work.

- **FIREFIGHTER OR PUBLIC SAFETY OFFICER:** The person retired as a firefighter or public safety officer as defined in G.C. section 3301 (peace officer) and will perform firefighter or public safety officer retired annuitant work. (G.C. section 7522.56(f)(4) and CCR section 579.25).

- **FERP PARTICIPATION:** The retiree is eligible to participate in the Faculty Early Retirement Program (FERP) pursuant to a collective bargaining agreement with the California State University that existed prior to January 1, 2013 or has been included in subsequent agreements.

**CalHR CERTIFICATION FOR STATE AGENCIES:** The state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position before 180 days have passed and the appointment has been approved by the Department of Human Resources (CalHR). CalHR will forward the approval to CalPERS. (G.C. section 7522.56)

**State Agency CalHR Resolution Certification:** The state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position before 180 days have passed and the appointment has been approved by the Department of Human Resources (CalHR). CalHR will forward the approval to CalPERS. (G.C. section 7522.56)

**State Agencies’ Approval through CalHR:** For state agencies to request approval from CalHR See the Retired Annuitant Hiring Exception Procedure (PML 2013-001).

**State Agency Employees Not Subject to CalHR Approval:** The following state agencies and their employees must secure a 180-day wait period exception for their retirees as follows:

- **LEGISLATIVE EMPLOYEES RESOLUTION-CERTIFICATION:** For legislative employees, the Senate Committee on Rules or the Assembly Rules Committee certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days has passed and
approves the appointment in a public meeting. The appointment may not be placed on a consent calendar.

- **COURT EMPLOYEES RESOLUTION CERTIFICATION:** For court employees, the Judicial Council of California certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days has passed and approves the appointment in a public meeting, for all of its subordinate divisions. The appointment cannot be placed on a consent calendar. No court division other than the Judicial Council of California can approve the 180 day wait period exception.

- **CALIFORNIA STATE UNIVERSITY (CSU) EMPLOYEES RESOLUTION CERTIFICATION:** For CSU employees, the Trustees of the CSU certify the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and approves the appointment in a public meeting. The appointment may not be placed on a consent calendar.

**SAMPLE 180 - DAY EXCEPTIONS RESOLUTIONS FOR LEGISLATIVE, COURT AND CSU RETIREES ONLY**

For the Senate Committee on Rules and the Assembly Rules Committee for legislative retirees; the Judicial Council of California for court retirees; and the Trustees of CSU for CSU retirees, to secure a 180-day wait period exception, the employer must submit a copy of the certification resolution (see acceptable sample resolutions below) along with a copy of the retiree’s employment agreement to CalPERS before the first day of employment.

To secure a 180-day wait period exception, the legislative, court or CSU employer must submit the resolution-certification package (see instructions and sample resolutions at the links below) and a copy of the retiree’s employment agreement or personnel appointment document to CalPERS before the first day of employment.

- [Service Retirement 180 – Day Wait Period Exception Sample Resolution](#)
- [Disability Retirement 180 – Day Wait Period Exception Sample Resolution](#)

For service retirees, please submit documents by fax to (916) 795-0704 or mail to:

CalPERS  
c/o Post Retirement Administration Unit  
c/o Working after Retirement Unit  
Benefit Services Division  
Employer Account Management Division  
PO Box 942709  
Sacramento, CA 94229-2709.

For disability/industrial disability retirees, please submit documents by fax to (916) 795-1522 or mail to:

CalPERS  
c/o Disability Retirement Unit  
Benefit Services Division  
PO Box 2796  
Sacramento, CA 95812-2796

**C. CIVIL SERVICE ELIGIBILITY REQUIREMENT**

In addition to the retirement law requirements, all retired annuitant appointments or appointments under G.C. section 21232 for disability/industrial disability retirees by state agencies must be based on Civil Service Act eligibility.
A retired state civil service employee may be appointed as a retired annuitant to a position that is either
(a) in the class in which the person had permanent or probationary status or a Career Executive
Assignment (CEA) appointment at the time of retirement; or (b) in another class to which the person could
have been permanently transferred, reinstated, or demoted at the time of retirement. A CalPERS retiree
who is not retired from civil service, i.e., retired from non-state contracting agencies and retired state
employees exempt from civil service, can only be appointed as a retired annuitant if he/she qualifies for
appointment under other civil service provisions such as emergency appointment, temporary
authorization (TAU) appointment or eligibility on a civil service employment list for the position.

For more information, see Personnel Management Policy and Procedures manual pages 360.1 – 360.4
available from the California Department of Human Resources. (CalHR)

**CalPERS Retirees Who Do Not Qualify As State Agency Retired Annuitants:** CalPERS retirees who
do not qualify as state agency retired annuitants cannot be appointed to non-testing or any other state
agency positions that qualify them for CalPERS membership without reinstatement form retirement, i.e.,
terminating their CalPERS retirement.

**GOVERNMENT CODES**

Government Code sections 21202, 21220, 21220.5, 21221(h), 21224, 21227, 21229, 21231, 21232,
7522.56, and 7522.57 provide the requirements for employment of a CalPERS retiree. Section 7522.56
provides that a retired person cannot serve, be employed by, or be employed through a contract directly
by a public employer in the same public retirement system from which the retiree receives benefits
without reinstatement from retirement, except as permitted.

**SERVICE RETIREMENT VS. DISABILITY/INDUSTRIAL DISABILITY RETIREMENT**

**SERVICE RETIREMENT**
A CalPERS service retiree may work for a CalPERS employer (i.e., an employer who contracts with
CalPERS for retirement benefits or state agencies in a retired annuitant position as noted above under
Civil Service Eligibility). If a service retiree is appointed to a permanent regular staff position, regardless of
whether part time or full time, he/she is unlawfully employed and subject to termination of retirement, i.e.,
reinstatement from retirement. See the Termination of Retirement Due to Unlawful Employment
section.

**DISABILITY/INDUSTRIAL DISABILITY RETIREMENT**
A CalPERS disability/industrial disability retiree may work for a CalPERS employer (i.e., an employer who
contracts with CalPERS for retirement benefits or state agencies in a retired annuitant position, as noted
above under Civil Service Eligibility, or in a permanent position). A retired annuitant position does not
require CalPERS pre-approval; however, the position must be significantly different from the position
which a retiree retired. The position should not include duties or activities that the retiree was previously
restricted from performing at the time of his/her retirement.

However, all positions must meet the requirement in G.C. section 21232. Violation of this requirement will
result in reinstatement from disability/industrial disability retirement.

In addition, neither a retired annuitant position nor a permanent position should include duties or activities
that the retiree was previously restricted from performing at the time of his/her retirement.

G.C. section 21232 states, “On and after January 1, 2013, a person who has retired for disability and has
not attained the mandatory age for retirement for persons in the employment in which they will be
employed, and whom the board finds is not disabled for that employment, may be so employed by any
employer without reinstatement form retirement if the position is not the position from which this person
retired or a position in the same member classification. The person’s disability retirement pension
shall be reduced during this employment to an amount that, when added to the compensation received, equals the maximum compensation earnable by a person holding the position that he or she held at the time of retirement. This employment shall terminate upon the person’s attainment of the mandatory retirement age for persons in that employment. A person employed under this section shall not be concurrently employed under this article.”

CalPERS pre-approval is required for working in a permanent position (full-time or part-time) for a CalPERS employer. See the Employment of a Disability/Industrial Disability Retiree section for more information.

**Retired Annuitant Employment Requirements for All Retirees**

For all retirees, CalPERS pre-approval is not required for appointment to retired annuitant positions. The retired annuitant employment requirements are as follows:

- **LIMITED DURATION WORK:** The retiree has the skills needed to perform work of limited duration or the employment is needed during an emergency to prevent stoppage of public business.

- **960 HOUR FISCAL YEAR LIMIT:** The hours the retiree works do not exceed 960 hours in a fiscal year (July 1st through June 30th) for employment with all CalPERS employers combined. There is no exception to this maximum hour limit. CalPERS considers it the equal responsibility of both the employer and retiree to ensure the retiree does not work more than 960 hours per fiscal year. A retired annuitant can work no more than 960 hours in a fiscal year, July 1 - June 30, for employment with all CalPERS employers combined. There is no exception to this limit. The retiree and employer have equal responsibility to track the hours worked.

  - A CSU academic retiree may be employed in any fiscal year as a member of the CSU academic staff in a retired annuitant position not to exceed 960 hours for all employers or 50 percent of the hours the member was employed during the last fiscal year of service prior to retirement whichever is less (GC sections 7522.56 and 21227).

- **Pay Rate:** The pay rate the retiree receives is within the pay rate range paid to other employees performing comparable duties as listed on the employer’s publicly available pay schedule.

- **PAY RATE ONLY COMPENSATION:**
  - Extra Help Positions: The retiree can be paid no more than the maximum monthly base salary paid to other employees performing comparable duties as listed on the employer’s publicly available pay schedule divided by 173.333 to equal an hourly rate.

  - Vacant Position Appointments: The retiree can be paid no more than the maximum monthly base salary paid to other employees performing comparable duties as listed on the employer’s publicly available pay schedule for the vacant position divided by 173.333 to equal an hourly rate.

- **No Benefits or Compensation in Addition to Pay Rate**
  - NO BENEFITS, OTHER COMPENSATION: The retiree cannot receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. **There are no exceptions.**

- **No Retirement Contributions:** No retirement contributions are collected or paid for employed retirees. Only active members pay contributions. (G.C. sections 7522.56 and 21224).

- **Payroll Reporting for Retired Annuitants:** All retirees hired as retired annuitants must be enrolled and their payroll reported to CalPERS. See the Payroll Reporting, Retired Annuitants” section in the guide.
CALIFORNIA STATE UNIVERSITY (CSU) ACADEMIC RETIREEs

• A CSU academic retiree may be employed in any fiscal year as a member of the CSU academic staff in a retired annuitant position not to exceed 960 hours for all employers or 50 percent of the hours the member was employed during the last fiscal year of service prior to retirement whichever is less (G.C. sections 7522.56 and 21227).

• For a CSU academic disability retiree, please see the “Service Retirement vs. Disability/Industrial Disability Retirement” section above.

UNEMPLOYMENT INSURANCE BENEFITS AND RETIRED ANNUITANT EMPLOYMENT

• California law prohibits the reappointment of a retired annuitant by a CalPERS employer if, during the 12-month period prior to reappointment, the retiree received unemployment insurance compensation for prior retired annuitant employment with any public employer.

• A retiree shall certify in writing to the employer upon accepting an offer of post-retirement employment that he or she is in compliance with this requirement.

• Employers may require retirees provide a current Unemployment Insurance Benefit (UIB) printout from the Employment Development Department (EDD) indicating whether or not they have collected unemployment insurance within the last 12 months to verify compliance:
  - Retired Annuitant Self-Certification form CalHR Form 715 can be downloaded from the CalHR website at www.calhr.ca.gov.
  - Authorization for Release of Unemployment Insurance Records for Retired Annuitants form EDD Form DE 1181 can be downloaded from the Employment Development Department (EDD) website at www.edd.ca.gov.

If a currently employed retiree is discovered to have received unemployment insurance compensation based on prior retired annuitant employment, with a CalPERS employer, the current employment must be terminated on the last day of the current pay period and the retiree shall not be eligible for reappointment by a CalPERS employer for 12 months following the termination of the current employment. A violation of this provision will not result in reinstatement from retirement. (G.C. sections 7522.56(e) and 21224.)

RETIRED ANNUITANT SELF CERTIFICATION FORM

CalHR Form 715, a Retired Annuitant Self-Certification form, can be downloaded from the CalHR website at www.calhr.ca.gov.

AUTHORIZATION FOR RELEASE OF UNEMPLOYMENT INSURANCE RECORDS FOR RETIRED ANNUITANTS

EDD Form DE-1181 can be downloaded from the Employment Development Department (EDD) website at www.edd.ca.gov.

CSU employers are not required to use these forms when employing retirees; however, they may require retirees to provide a current Unemployment Insurance Benefit (UIB) print out indicating if they have collected unemployment insurance benefits within the previous 12 months.

SPECIAL APPOINTMENTS - Retired Annuitant Requirements Do Not Apply

1. ELECTED AND APPOINTED OFFICERS: As authorized by G.C. section 21231 (previously G.C. section 21221(d) and 21222), a CalPERS retiree may serve in an elected or appointed office while retired. However, if all or part of this retiree’s retirement allowance is based on service credit in that
office, the portion of the retirement allowance based on that service credit is suspended during the retiree’s time in office. When the retiree leaves the office, his/her allowance is unsuspended prospectively.

**Elective Positions – 12/31/2012 & Prior**

Any retiree may serve as an elective officer without reinstatement from retirement; however, any part of the retirement allowance based on previous service in that same elected office shall be suspended during the post-retirement incumbency in that office. This applies only to retirees who were already serving in elective office December 31, 2012 and prior. (G.C. sections 21221(d) and 21222.)

**Elective Positions – 1/1/2013 & Later**

On or after January 1, 2013, any retiree may serve as an elective officer without reinstatement from retirement; however, any part of the retirement allowance based on previous service in that same elected office shall be suspended during the post-retirement incumbency in that office (G.C. sections 21231(a) and (b)).

**Employment of a Retiree as an “Independent Contractor”, “Consultant”, or “Contract Employee”**

**INDEPENDENT CONTRACTOR EMPLOYMENT - INDEPENDENT CONTRACTOR, CONSULTANT OR THIRD-PARTY EMPLOYEE**

Before employing a retiree as an independent contractor, consultant or contract third-party employee, please see “Positions Excluded from CalPERS Coverage, Independent Contractors” and note the following:

- Independent contractors are not “employees” and are excluded from membership in CalPERS by G.C. section 20300(b). An independent contractor is someone who contracts to provide a service or complete a task according to his or her own methods, and is not subject to the contracting entity’s control as to the end product, final result of work, or manner and means by which the work is performed. CalPERS uses the “Common Law Control Test” as a guide to determining independent contractor status. The common law control test factors are enunciated in the case of Albert B. Tieberg v. Unemployment Insurance Board (1970) 2 Cal.3d 943, 949. These factors are also cited in the CalPERS Precedential Decision Case No. 05-01, In the Matter of the Application for CalPERS membership credit by Lee Neidengard, Respondent and Tri-Counties Association Regional Center, Respondent. ([https://www.calpers.ca.gov/docs/05-01-neidengard-tri-counties-disabled.pdf](https://www.calpers.ca.gov/docs/05-01-neidengard-tri-counties-disabled.pdf)). A “contract employee” (i.e., a common law employee who periodically signs an employment contract) is eligible for CalPERS membership, if otherwise qualified.

- If the position is one in which an active CalPERS member would earn service credit, the employment is subject to the retired annuitant requirements.

- If the retiree will be your employee under common-law employment principles, i.e., there is an employer-employee relationship, the employment is subject to the retired annuitant requirements.

- Statutory positions, i.e., positions that are employees by statute cannot be filled by an independent contractor, consultant or third-party employee. Examples are City Mayor, Police Chief and Fire Chief of your agency by statute cannot be filled by an independent contractor, consultant or contract employee.

It is recommended that prior to hiring a retiree as a purported independent contractor you obtain an Independent Contractor vs. Employee determination from CalPERS. Contact the Employer Account
Management Division at 888 CalPERS (or 888-225-7377) and request the Independent Contractor Checklist package.

To request an Independent Contractor vs. Employee determination before hiring a retiree, contact the Benefit Services Division either at 888-225-7377 or the address below and request the Independent Contractor Checklist package:

CalPERS
C/o Post Retirement Administration Unit
Benefit Services Division
P.O. Box 942714
Sacramento, CA 94229-2711

**EMPLOYMENT THROUGH A THIRD PARTY EMPLOYER (ALL RETIREES)**

Before employing a retiree through a third party employer, temporary employment agency or through the retiree’s own business entity, see “Positions Excluded from CalPERS Coverage, Independent Contractors” and note the following:

- The fact a third party employer pays the retiree’s wages or salary does not exempt the employment from the retired annuitant requirements.
- If the retiree will be your employee under common-law employment principles, i.e., there is an employer-employee relationship, the employment is subject to the retired annuitant requirements.
- If the position is one in which an active CalPERS member would earn service credit, the employment is subject to the retired annuitant requirements.
- Statutory positions, i.e., positions that are employees of your agency by statute cannot be filled by employees of a third party employer. Examples are City Mayor, Police Chief and Fire Chief.
- Payroll Reporting for Retired Annuitants hired through a Third Party Employer: If a retiree hired through a third party employer qualifies as a retired annuitant, you the retiree must be enrolled as a retired annuitant and you must obtain the pay rate and hours worked from the third party employer and report his/her payroll the same as for your directly employed retired annuitants.

It is recommended that prior to hiring a retiree as a purported employee of a third party employer you obtain an Independent Contractor vs. Employee determination from CalPERS. Contact the Employer Account Management Division at 888 CalPERS (or 888-225-7377) and request the Independent Contractor Checklist package.

To request an Independent Contractor vs. Employee determination before hiring a retiree through a third party employer, contact the Benefit Services Division either at 888-225-7377 or at the address below and request the Independent Contractor Checklist package:

CalPERS
C/o Post Retirement Administration Unit
Benefit Services Division
P.O. Box 942714
Sacramento, CA 94229-2711

**EMPLOYMENT IN OTHER PUBLIC RETIREMENT SYSTEMS**

If a retiree is a service retiree, he/she can be employed in positions that qualify for membership in any other public retirement system without terminating their CalPERS retirement.

If a retiree is a disability retiree, he/she can work for an employer in a different retirement system and
continue to receive his/her CalPERS retirement allowance with the following restrictions:

- The employment must be in a position significantly different from the one from which the retiree retired. The position should not include duties of activities he/she was previously restricted from performing at the time of his/her retirement.

If a retiree is a disability retiree under the service retirement age, his/her retirement benefit will be subject to an earnings limit. He/she is required to report his/her employment earnings to CalPERS either on a monthly or quarterly basis. The total employer-paid portion of his/her monthly retirement allowance and his/her new earnings cannot be greater than the current compensation of the position from which he/she retired. If the total is greater, his/her retirement allowance will be reduced. Contact us at 888 CalPERS (or 888-225-7377) to request a Disability Retiree’s Report of Earnings form.

If a retiree is an industrial disability retiree, his/her retirement allowance is not subject to an earnings limit, even if he/she is under the service retirement age.

- If a retiree is under the service retirement age and is determined to be performing duties similar to those from which he/she was previously found disabled, CalPERS can re-evaluate his/her medical condition to determine whether he/she should be reinstated from retirement back into his/her former position.

A retiree’s disability retirement requires him/her to inform CalPERS immediately if he/she is no longer incapacitated or if he/she is currently employed in a position similar to the job he/she retired from.

Employment in CalSTRS Certificated Positions: Upon clarification by the Department of Finance and the appropriate legislative committee analysts of the legislative intent of PEPRA’s Government Code section 7522.56, Conditions and Limitations on Service After Retirement, CalPERS will no longer interpret this section to prohibit CalPERS’ retirees from accepting CalSTRS covered certificated positions or positions in any other public retirement system. Given this, no new statute or amendment to section 7522.56 is required to allow for the lawful employment of CalPERS’ retirees in CalSTRS covered certificated positions or positions in any other public retirement system. The 180 day wait period and bona fide separation requirements do not apply to CalSTRS covered certificated positions or positions in any other public retirement system.

CalPERS retirees cannot elect CalSTRS membership for CalPERS covered classified positions per Government Code section 20309, which only applies to active CalPERS members.

Employment in JRS II or LRS: For information about employment in positions that qualify for membership in the Judges’ Retirement System II (JRS II) or the Legislators’ Retirement System (LRS), please call (916) 795-3688.

PRIVATE SECTOR EMPLOYMENT AFTER RETIREMENT

If a retiree is a service retiree, he/she can work for a private industry employer not associated with any CalPERS employer without restrictions and continue to receive his/her retirement allowance.

If a retiree is a disability retiree, he/she can work for a private industry employer not associated with any CalPERS employer and continue to receive his/her CalPERS retirement allowance with the following restrictions:

- The retiree’s employment must be in a position significantly different from the one from which he/she retired. The position should not include duties or activities he/she was previously restricted from performing at the time of his/her retirement.
• If a retiree is a disability retiree under the service retirement age, his/her retirement benefit will be subject to an earnings limit. He/she is required to report his/her employment earnings to CalPERS either on a monthly or quarterly basis. The total employer-paid portion of his/her monthly retirement allowance and his/her new earnings cannot be greater than the current compensation of the position from which he/she retired. If the total is greater, his/her retirement allowance will be reduced. Contact us at 888 CalPERS (or 888-225-7377) to request a Disability Retiree’s Report of Earnings form.

• If a retiree is an industrial disability retiree, his/her retirement allowance is not subject to an earnings limit, even if he/she is under the service retirement age.

• If a retiree is under the service retirement age and is determined to be performing duties similar to those from which he/she was previously found disabled, CalPERS can re-evaluate his/her medical condition to determine whether he/she should be reinstated from retirement back into his/her former position.

A retiree’s disability retirement requires the retiree to inform CalPERS immediately if he/she is no longer incapacitated or if he/she is currently employed in a position similar to the job he/she retired from.

EMPLOYMENT OF A DISABILITY/INDUSTRIAL DISABILITY RETIREE

To be eligible for employment in a permanent position (part time or full time) while receiving a disability/industrial disability retirement allowance, a disability retiree must first meet the following requirements:

A. The bona fide separation requirement if applicable
B. The 180-day wait period requirement or an allowable exception
C. No receipt of unemployment insurance payments for previous retired annuitant employment 12 months before the appointment
D. State Employer Civil Service Eligibility for employment with a state agency employer

CalPERS pre-approval is required for if a retiree who is receiving a disability/industrial disability retirement allowance wants to working in a permanent position (including permanent part time and full time) without reinstatement. Such employment cannot begin prior to the Board’s approval. (G.C. section 21220). The employment must meet the requirement in G.C. section 21232. In addition, the position should not include duties or activities that the retiree was previously restricted from performing at the time of his/her retirement. Violation to any of these requirements will result in reinstatement from disability/industrial disability retirement. (G.C. sections 21220 and 21202)

A disability/industrial disability retiree cannot be employed in a pre-approved G.C. section 21232 permanent position and be employed in a retired annuitant position at the same time.

Upon approval of the re-employment, the employer is required to enroll the retiree in the myCalPERS system and report the retiree’s payroll. No retirement contributions are collected or paid for employed retirees. Only active members pay contributions.

The retiree will be required to submit a copy of first paystub and a copy of his/her W-2 annually, in January to CalPERS, as the disability/industrial disability retirement pension is subject to an earnings limit for as long as the employment continues. (G.C. section 21232)

If the retiree is to be promoted, demoted, lateral transferred, reclassified, change job location or restarts a previous approved position or changes to a different employer, a new re-employment approval must be obtained prior to the position change, or the retiree may be subject to retroactive
reinstatement from disability/industrial disability retirement and be liable for reimbursement of any retirement allowance paid.

NOTE:
No employee or employer contributions are made to CalPERS for these types of employment.

For specific questions concerning employment of a CalPERS retiree, always refer to the most current circular letter on post retirement employment. For the information provided to members and retirees, please review the member publication Employment After Retirement (PUB 33) available through the Forms & Publications page on the CalPERS website at www.calpers.ca.gov.

Consequences of Unlawful Employment

Violation of the retired annuitant requirements by any retiree or the section 21232 requirements by a disability/industrial disability retiree can result in reinstatement from retirement, i.e., the termination of the retiree's monthly retirement allowance and any other post retirement benefit. If reinstated for unlawful employment, the retiree will be required to reimburse CalPERS for all retirement allowance received during the period of unlawful employment. Upon enrollment of the reinstated retiree into active membership, the employer who unlawfully employs the retiree will be required to pay retroactive employer contributions and collect retroactive member contributions for the period of unlawful employment, plus interest.