



California Public Employees' Retirement System
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Announcements

Circular Letter

December 13, 2021

Circular Letter: 200-069-21

Distribution: Specific Distribution List

To: Agencies With an Hourly Exclusion
Subject: Retirement Contract Exclusion for Hourly Paid Employees

Purpose

The purpose of this Circular Letter is to clarify the appropriate application of the retirement contract exclusion for employees paid on an hourly basis commonly referred to as an “hourly exclusion.” A recent review revealed that employers may be applying the hourly exclusion inaccurately. Employers who still have the hourly exclusion in their retirement contract should amend their contracts to specify the groups of employees subject to the exclusion.

Background

Beginning in 1965, the California Public Employees' Retirement System (CalPERS) allowed participating employers to add a membership exclusion in their retirement contract for “hourly rated or hourly basis employees.” Recently, we asked those employers that added this exclusion to explain how they were applying the exclusion and to identify the excluded positions to ensure it is being applied appropriately. In those responses, we received a variety of interpretations and applications, which creates challenges in administering and monitoring the exclusion.

Application

Membership in this system is required for all employees unless excluded by law or contract. Under the “hourly exclusion,” employees who are paid hourly are excluded from becoming CalPERS members while employed in these positions. The rules regarding membership detailed

in Government (Gov.) Code section 20305(a) of the Public Employees' Retirement Law do not apply to those employees who are paid hourly and excluded by contract under the agency's hourly exclusion. Under this exclusion, even if an hourly paid employee meets one of the criteria in Gov. Code section 20305, they are not to be enrolled into the system. However, one of the main non-compliant applications occurs when an agency excludes temporary and seasonal positions. Gov. Code section 20305(b) prohibits **any** exclusion of temporary or seasonal employees, even if they are paid hourly. The agency must apply the membership rules detailed in Gov. Code section 20305(a) because temporary or seasonal exclusions are void under Gov. Code section 20305(b), regardless of how an employee is paid.

Continued Compliance

Due to the difficulty agencies can have correctly applying the hourly exclusion as well as potential adverse administrative decisions, agencies should work with CalPERS to replace this exclusion in their retirement contract with one that defines the position titles that are excluded. Once an agency elects to replace the hourly exclusion, an employee previously excluded is **not** immediately eligible for CalPERS membership. The employee must still meet one of the criteria in Gov. Code section 20305 to qualify for membership. Once an employee meets the criteria, the employee is eligible for CalPERS membership and must be enrolled.

Agencies that continue to have the hourly exclusion must continue to track, report, and enroll employees into CalPERS membership not subject to the hourly exclusion. To mitigate potential liability for prior service, we recommend agencies establish clear policies and guidelines regarding those positions excluded by contract under their hourly exclusion and those that are not. Establishing internal controls should clearly define which positions are excluded and how to apply the hourly exclusion and be in compliance.

When a new employee is hired in a position excluded under the hourly exclusion, provide the employee with the [Notice of Exclusion From CalPERS Membership For Public Agency and Schools \(PERS-EAMD-139\) \(PDF\)](#) form to complete. This form notifies the employee they are not being enrolled into CalPERS membership due to the agency's contract exclusion for hourly paid employees and ensures all parties are aware the employee is being excluded from CalPERS membership. Additional guidance regarding membership rules can be located in our [Public Agency & Schools Reference Guide \(PDF\)](#).

Next Steps

Your agency can amend its contract to specify or clarify the specific excluded positions, or to remove the exclusion completely. If your agency would like assistance to amend its contract, email [Membership Reporting](#) in the Employer Account Management Division.

Questions

If you have questions regarding your hourly exclusion, its application, or how to remove or amend this exclusion, email [Membership Reporting](#).

Renee Ostrander, Chief
Employer Account Management Division