Pension & Health Benefits Committee

Agenda Item 5a

November 17, 2026

Item Name: Proposed Regulation Defining Limited Duration for Post-Retirement Employment

Program: Employer Account Management Division

Item Type: Action

Recommendation

Approve staff's recommendation to adopt Section 574.1 of Title 2 of the California Code of Regulations to define "limited duration" for post-retirement appointments with CalPERS-covered employers (hereinafter referred to as employers), followed by submission of the final rulemaking package to the Office of Administrative Law (OAL) upon conclusion of the 45-day public comment period if no public comments are received.

Executive Summary

The California Public Employees' Retirement Law and the California Public Employees' Pension Reform Act of 2013 do not explicitly define "limited duration" for post-retirement appointments. The proposed regulation is necessary to explicitly define "limited duration" as stated in Government Code (GC) sections 7522.56, 21224, and 21229 for post-retirement appointments.

By proposing this regulation, CalPERS seeks to provide clarity and uniformity for CalPERS, its members, employers, and other stakeholders, ensuring consistent use of the term "limited duration." The proposed regulation defines "limited duration" as a limit of 24 consecutive months per post-retirement appointment, if the appointment meets certain requirements. The proposed regulation provides employers an option to extend the appointment twice by approving 12 consecutive month extensions after certifying specific requirements are met. After the second extension period, the proposed regulation also provides employers with an option to approve an exemption for a continuous extension if the appointment does not exceed 120 hours per fiscal year (FY) after certifying specific requirements are met.

Strategic Plan

This agenda item supports the Organizational Excellence goal of the 2022-27 CalPERS Strategic Plan through the objective of cultivating compliance and risk functions throughout the enterprise.

Background

Working after retirement statutes were first introduced more than seventy years ago, and around that time, the phrase “limited duration” was added to the statutes. Since then, there have been several amendments to the working after retirement statues, and currently, GC sections 7522.56, 21224, and 21229 include the phrase “limited duration” when referring to post-retirement employment.

In June 2022, CalPERS filed a rulemaking action with OAL to propose the adoption of section 574.1, “Definition of Limited Duration Employment,” of Title 2 of the California Code of Regulations. The rulemaking action expired in June 2023, and the proposed regulation did not go into effect.

Since 2023, employers have continued to seek clarification on what constitutes “limited duration.” Accordingly, CalPERS is restarting the rulemaking process by proposing these regulations defining “limited duration” for post-retirement appointments.

Analysis

Definition of Limited Duration

The proposed regulation defines “limited duration” as a limit of 24 consecutive months for post-retirement appointments, regardless of the number of months or hours the retired person worked during that period. The 24 consecutive month period does not pause or restart if a retired person does not work in each month of that period.

Based on CalPERS’ FY 2018-19 through FY 2024-25 post-retirement appointment data, 70% of post-retirement appointments were active for two consecutive FYs or less. Therefore, the proposed definition of “limited duration” covers most post-retirement appointments.

For any current post-retirement appointment, the 24 consecutive month period will begin on the effective date of the approved regulation. In addition, the proposed regulation does not change the 960-hour per FY limit a retired person can serve in a post-retirement appointment that is set forth in GC sections 7522.56, 21224, and 21229.

Definition of Appointment

For purposes of this proposed regulation, an appointment is defined as either:

- A post-retirement position under which no duties overlap with the duties of another post-retirement position that the retired person performed for the same employer, or
- A post-retirement position for a different employer from any previous employer the retired person performed duties for after retirement.

Defining an appointment for purposes of this regulation establishes how time is calculated toward the post-retirement appointment’s duration and clarifies what constitutes a new appointment. Specifying successive post-retirement appointments cannot include overlapping duties reduces the risk of an employer circumventing the extension and exemption processes and a retired person performing the same duties indefinitely through successive post-retirement appointments.

Nothing in the definition precludes a retired person from working in a post-retirement position performing similar work to the work they performed for the same employer prior to retirement. The requirement that no duties overlap applies only to post-retirement positions with the same employer.

Extension Process

If employers need the retired person's skills beyond 24 consecutive months, the proposed regulation allows employers to extend the appointment twice for 12 consecutive months each, for a total duration of 48 consecutive months. The employer's governing body must approve the extension and certify certain requirements are met at a public meeting before a retired person can continue working in the appointment beyond the 24 or 36 consecutive month period. The extension period is continuous regardless of when the extension is approved. For example, if the 24 consecutive month period ends on April 30, 2027 and the employer's governing body approves the extension on August 1, 2027, the extension period will still end on April 30, 2028.

Based on CalPERS' FY 2018-19 through FY 2024-25 post-retirement appointment data, 87% of post-retirement appointments were active for four consecutive FYs or less. Therefore, the proposed definition of "limited duration" plus the two optional extensions covers almost 90% of post-retirement appointments.

Exemption Process

If employers need the retired person's skills beyond the second extension period, the proposed regulation allows employers to approve an exemption for a continuous extension that does not exceed 120 hours per FY. Retired persons serving in a post-retirement appointment for which the employer has approved an exemption cannot serve concurrently in another post-retirement appointment for which the same employer has approved an exemption. This option provides employers the flexibility to utilize a retired person's skill on a limited basis for exigent circumstances and needs.

For the 120-hour exemption, the employer's governing body must approve the exemption and certify certain requirements are met at a public meeting before a retired person can work beyond the 48 consecutive month period.

If the employer does not approve an exemption within 12 consecutive months from the end of the 48 consecutive month period, the post-retirement appointment ends. The employer can no longer extend the post-retirement appointment, and the retired person cannot work in another post-retirement position with that same employer unless the duties for the new post-retirement position do not overlap with duties of the previous post-retirement position.

Extension and Exemption Criteria and Reporting

Employers must notify CalPERS of any approved extensions and exemptions, and retain and provide certification records to CalPERS upon request during any future investigations or audits. In addition, CalPERS will publish an annual report of all retired persons approved for an extension or exemption. Publishing an annual report including extensions and exemptions, as well as the potential for investigations and audits, increase transparency and facilitate compliance with the regulatory requirements.

Table 1 displays the extension and exemption requirements the employer's governing body must certify at a public meeting. Requiring employers to certify these requirements at a public

meeting documents the employer's need for the specific retired person to continue working in the post-retirement appointment beyond the 24, 36, or 48 consecutive month period and increases transparency.

Table 1: Summary Comparison of Extension and Exemption Requirements

Requirements	Extension	Exemption
Position title	Yes	Yes
Description of duties to be performed	Yes	Yes
The reason the appointment needs to be extended	Yes	Yes
The reason the duties cannot be performed by non-retired employees	Yes	No
A plan is in place to transition the duties to non-retired employees or another retired person	Yes	No
The reason the duties cannot be performed by non-retired employees or another retired person	No	Yes
The appointment will not exceed 120 hours per FY	No	Yes
The retired person will not serve in more than one appointment at a time for which the same employer has approved an exemption	No	Yes
The anticipated end date	Yes	Yes
The employer's governing body's approval	Yes	Yes

Certification of Appointments with the State, California State University, and Legislature

For state post-retirement appointments, each state department's Director or executive level designee shall certify the requirements are met for extensions and exemptions. Designating state department Directors or executive level designees provide consistency across the state departments.

For California State University post-retirement appointments, the Trustees of the California State University shall certify the requirements are met by resolution at a public meeting. For post-retirement appointments with the legislature, the Senate Committee on Rules or the Assembly Rules Committee shall certify the requirements are met, as applicable, by resolution at a public meeting.

Collective Bargaining Agreements

If a collective bargaining agreement explicitly sets a different duration for post-retirement appointments, that duration, not to exceed 60 consecutive months, applies instead of the defined 24 consecutive months. In addition, employers will not have the option to approve an extension or exemption for those post-retirement appointments, and retired persons cannot hold another post-retirement appointment with the same employer.

Budget and Fiscal Impacts

The proposed regulatory action is technical. CalPERS does not anticipate that it will impose any direct budget or fiscal impacts to the State. CalPERS expects to absorb the administrative costs related to receiving notifications for post-retirement appointment extensions and exemptions within the existing budget and resources.

Benefits and Risks

The proposed regulation is necessary to explicitly define “limited duration” for post-retirement appointments. Adopting this proposed regulation will clarify the meaning of “limited duration” for post-retirement appointments and provide uniformity for CalPERS, its members, employers, and other stakeholders by ensuring consistent use of the term. In addition, these proposed regulations will help retired persons and employers comply with post-retirement employment limitations.

Attachment

Attachment 1 – Text of Proposed Regulation

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