

INITIAL STATEMENT OF REASONS

Proposed Adoption of Article 4, Section 574 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Definition of Full-Time Employment

The proposed regulation is necessary to clarify the California Public Employees' Retirement System's (CalPERS) interpretation of what is considered "full-time" employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. The CalPERS Board of Administration (Board) previously set forth the requirements for full-time employment in a Board resolution for the purpose of determining compensation earnable, and CalPERS has provided related guidance to contracting agencies regarding the number of hours it considers necessary for full-time employment in the CalPERS Public Agency and Schools Reference Guide (PA & Schools Guide).¹ However, the California Public Employees' Retirement Law (PERL) does not explicitly define the term "full-time" except as it applies to certain school members. 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."

PROBLEM THE PROPOSED REGULATION INTENDS TO ADDRESS

The PERL uses such phrases as "full-time employment," "full-time employees," and "full-time basis" in certain Government Code (GC) 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. GC section 20636.1, which sets forth the definition of compensation earnable for school members, provides that full-time employment for classified school members is 40 hours per week.

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 allows the Board to establish a minimum and maximum range that it would consider as full-time employment for the retirement system's 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 for full-time employment. 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

¹ The information provided in the PA & Schools Guide is for the contracting agency's convenience and reference as a general guide only and cannot be relied upon as an authoritative source for the law, practices, or policies of CalPERS.

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. The PA & Schools Guide states, "CalPERS considers full-time employment to be between 34 and 60 hours per week. Contracting agencies generally have the ability to determine what constitutes full-time for an employee provided that the employee works between 34 and 60 hours per week." Exceptions that fall outside of the 34 to 60 hours per week range have been granted by the Board. For example, the California Department of Forestry firefighters, while assigned to non-fire mission duty, work an average of 40 hours per week. However, while assigned to fire mission duty, their normal work week average may increase up to 72 hours per week.

This regulation would clarify CalPERS' definition of "full-time" as used in the PERL and the PA & Schools Guide for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. 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. The 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 PERL. 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. The proposed regulation will not apply to the extent it conflicts with a provision in the PERL, such as the provision in GC section 20636.1 that states that full-time employment for classified school members is 40 hours per week.

PURPOSE, BENEFITS, OR GOALS OF THE AUTHORIZING STATUTES

GC section 20121 authorizes the Board to make such rules as it deems proper. In addition, GC section 7522.02(i) authorizes each public retirement system to adopt regulations to comply with the requirements of the Public Employees' Pension Reform Act of 2013 (PEPRA).

This regulation explicitly defines “full-time” employment, which CalPERS and contracting agencies use to determine CalPERS membership eligibility in accordance with GC section 20305, report overtime positions in accordance with GC sections 20635 and 20635.1, determine compensation earnable in accordance with GC sections 20636 and 20636.1, and determine pensionable compensation in accordance with GC section 7522.34. The proposed regulation will not apply to the extent it conflicts with a provision in the PERL, such as the provision in GC section 20636.1 that states that full-time employment for classified school members is 40 hours per week.

RATIONALE FOR DETERMINATION THAT ADDITION IS REASONABLY NECESSARY TO ADDRESS THE PROBLEM

The proposed regulation is necessary to explicitly define “full-time” employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation, as “full-time” is referenced in the PERL but not defined for these purposes except as the term applies to certain school members. Removing the upper limit of 60 hours per calendar week will allow contracting agencies more flexibility to determine full-time employment for employees like firefighters, for example, who may have a weekly schedule of greater than 60 hours per week.

SPECIFIC PURPOSE FOR THE ADOPTION OF THE PROPOSED REGULATION

Purpose of the Proposed Addition of Section 574 Definition of Full-Time Employment

The purpose of the proposed addition of section 574(a) to the California Code of Regulations (CCR) is to define “full-time” employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. Section 574(a) also clarifies that the proposed regulation does not apply to the extent it conflicts with a provision in the PERL.

The purpose of the proposed addition of CCR section 574(b) is to clarify that contracting agencies may determine the normal work week hours for full-time employment for their employees and to set forth related notification requirements for contracting agencies.

The purpose of the proposed addition of CCR section 574(c) is to require a contracting agency to submit a request for an exemption to the Board if the contracting agency’s normal work week for full-time employment does not meet the minimum hour requirement set forth in section 574(a).

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed regulation would provide further clarification regarding the definition of full-time employment for the purposes of administering benefits, as follows:

1. Determining CalPERS Membership Eligibility
 - a. An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from membership unless he or she falls under an exception. (GC section 20305).
2. Reporting Overtime Positions
 - a. Overtime for non-school members is “The aggregate service performed by an employee as a member for all contracting agencies and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.” (GC section 20635).
 - b. If a member concurrently renders service in two or more positions, one or more of which is full-time, service in the part-time position constitutes overtime. If two or more positions are permanent and full-time, the position with the highest payrate or base pay is to be reported. (GC sections 20635 and 20635.1).
3. Determining Compensation Earnable and Pensionable Compensation
 - a. “Compensation Earnable” and “Pensionable Compensation” are pay that are paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. While GC section 20636.1(b)(1) provides that full-time employment for classified school members is 40 hours per week, full-time employment is not defined for non-classified school members and non-school members. In addition, for compensation earnable for part-time service, compensation earnable is the compensation that would have been earnable if the employment had been on a full-time basis. (GC Sections 20636, 20636.1, 20967, and 7522.34).

NECESSITY

The proposed addition of CCR section 574(a) is needed to clarify CalPERS’ interpretation of “full-time” employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. This will provide clarity and uniformity for CalPERS, its members, covered contracting agencies, and other stakeholders to ensure consistent use of the term. Section 574(a) is also necessary to clarify that the proposed regulation does not apply to the extent it conflicts with a provision in the PERL.

The proposed addition of CCR section 574(b) is needed to is to clarify that contracting agencies may determine the normal work week hours for full-time employment for their employees. This section is also necessary to set forth related notification requirements for contracting agencies to report to CalPERS their definition of full-time. Requiring contracting agencies to report to CalPERS their definition of full-time ensures that members are credited with the proper amount of service credit each pay period and the final compensation amount is accurate.

The proposed addition of CCR section 574(c) is needed to address contracting agencies whose normal work week for full-time employment does not meet the minimum hour requirement set forth in section 574(a). Section 574(c) requires such contracting agencies to submit a request for an exemption to the Board.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON BY THE AGENCY

GC Section 7522.02 – General Provisions (PEPRA)
GC Section 7522.34 – Definition of pensionable compensation (PEPRA)
GC Section 20120 – Management and Control of System
GC Section 20121 – Rules
GC Section 20122 – Applicability of Part and Rules
GC Section 20123 – Determination and Modification of Benefits
GC Section 20124 – Adjustment of Benefits
GC Section 20305 – Part-Time Employees
GC Section 20635 – Overtime Compensation Excluded
GC Section 20635.1 – Overtime Compensation Excluded - School Member
GC Section 20636 – Compensation Earnable
GC Section 20636.1 – Compensation Earnable - School Member
GC Section 20967 – Compensation Earnable for Part-time service
PA & Schools Reference Guide – September 2017
Economic and Fiscal Impact Statement (STD. 399)
December 8, 1932 Board Resolution regarding full-time employment
December 11, 1953 Board Resolution regarding full-time employment
October 15, 1980 Board Resolution regarding full-time employment

BUSINESS IMPACT

The proposed regulation will not have an adverse economic impact on business, as contracting agencies currently follow the guidance in the PA & Schools Guide, which provides that “CalPERS considers full-time employment to be between 34 and 60 hours per week. Contracting agencies generally have the ability to determine what constitutes full-time for an employee provided that the employee works between 34 and 60 hours per week.” To date, contracting agencies who define “full-time” employment as a range other than CalPERS’ 34-60-hour range have requested and obtained an exemption from the Board pursuant to the 1980 Board resolution. 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. Under the proposed regulation, the Board would continue to require that contracting agencies whose employees work less than 34 hours per week as full-time employment request and obtain an exemption from the Board.

ECONOMIC IMPACT ASSESSMENT

The proposed regulation is consistent with existing law and necessary to ensure consistent use of the term “full-time.” In accordance with GC section 11346.3, subdivision (b), CalPERS has made the following assessments regarding the proposed regulation:

Creation or Elimination of Jobs within the State of California

No jobs within the State of California will be created or eliminated by this proposed regulation. This regulation serves only to clarify and explicitly define “full-time” employment for CalPERS’ purposes.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

No new businesses will be created and no existing businesses will be eliminated by this proposed regulation. This regulation serves only to clarify and explicitly define “full-time” employment for CalPERS’ purposes.

Expansion of Businesses within the State of California

This proposed regulation is not expected to expand or prevent the expansion of any existing businesses within the State of California. This regulation serves only to clarify and explicitly define “full-time” employment for CalPERS’ purposes.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

This proposed regulation will not adversely impact the health and welfare of California residents, worker safety, or the State’s environment, because the proposed regulation serves only to clarify and explicitly define “full-time” employment for CalPERS’ purposes.

ALTERNATIVES TO THE REGULATORY ACTION AND CALPERS REASON FOR REJECTING THOSE ALTERNATIVES

CalPERS has not identified any reasonable alternatives that would be as effective or less burdensome than the proposed regulation. Regulatory action was determined to be the most transparent and consistent means of providing clarity to contracting agencies and CalPERS members regarding CalPERS’ requirements for “full-time” employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. CalPERS will consider any reasonable alternatives proposed through the public comment period associated with this regulatory action.

ALTERNATIVES TO THE REGULATORY ACTION THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulations will only apply to CalPERS, CalPERS members, and CalPERS covered contracting agencies. CalPERS has not identified any adverse impacts on small businesses. As CalPERS has identified no adverse impact on small businesses caused by the proposed regulatory action, it has not identified any reasonable alternatives that would lessen the impact on small businesses.