

Title 2. Administration

Proposed Adoption of Section 574.1 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

§ 574.1. Definition of Limited Duration Employment

(a) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, "limited duration" is defined as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered employer.

(1) For purposes of this subdivision, an appointment is defined as either, a position involving work that is substantially different from work that the retired person performs after retirement in another position for the same CalPERS-covered employer, or a position for a different CalPERS-covered employer from any previous CalPERS-covered employer the retired person performed work for after retirement.

(2) The appointment start date initiates time counted towards the twenty-four consecutive month limit. Employment by a retired person prior to the effective date of this subdivision will not count towards the limit of twenty-four consecutive months.

(3) A CalPERS-covered employer must notify CalPERS of an appointment end date not to exceed twenty-four consecutive months from the appointment start date or the effective date of this subdivision, whichever date is later, and any changes to the appointment end date.

(4) A CalPERS-covered employer may extend the appointment no more than twice, up to twelve consecutive months per extension, beyond the initial limit of twenty-four consecutive months, if by the end date of the initial appointment and the end date of the first extension, the applicable condition below is met:

(A) For an appointment with a CalPERS-covered contracting agency or school employer, the employer's governing body certifies, by resolution at a public meeting, its approval of the appointment extension and the reason the work required under the appointment cannot be performed satisfactorily by non-retired employees. The appointment extension may not be placed on a consent calendar.

(B) For an appointment with the California State University, the Trustees of the California State University certifies, by resolution at a public meeting, its approval of the appointment extension and the reason the work required under the appointment cannot be performed satisfactorily by non-retired employees. The appointment extension may not be placed on a consent calendar.

(C) For an appointment with the state, the Department of Human Resources certifies, by memorandum, its approval of the appointment extension and the reason the work required under the appointment cannot be performed satisfactorily by non-retired employees.

(5) The first day following the end of the initial limit of twenty-four consecutive months or the first extension limit of twelve consecutive months initiates time counted towards the limit of twelve consecutive months for the first or second extension, as applicable.

(6) The CalPERS-covered employer shall retain the records reflecting the certifications required in paragraph (4) of this subdivision and the duty statements for the position. The CalPERS-covered employer shall provide this information to CalPERS upon request during the exemption request process described in paragraph (7) of this subdivision or during any future investigations or audits.

(7) A CalPERS-covered employer may request an exemption to the limit of two extensions prescribed in paragraph (4) of this subdivision by filing a written request with the board.

(A) The board will grant one of the exemptions described in subparagraph (B) per appointment, if the board determines that each of the following conditions are met:

(i) The conditions set forth in subparagraphs (A) through (C) of paragraph (4) of this subdivision for each subsequent exemption request, as applicable.

(ii) CalPERS receives the exemption request for review by the end date of the second extension, or the end date of any subsequent extension of twelve consecutive months granted pursuant to a previously approved exemption, as applicable.

(iii) The CalPERS-covered employer completed a recruitment for the work required under the appointment within the twelve consecutive months prior to the date of the exemption request and certifies that it was unable to fill the position with that recruitment.

(B) An exemption granted pursuant to paragraph (7) of this subdivision shall be for either:

(i) An unlimited extension if the appointment does not exceed 120 hours per fiscal year, or

(ii) An extension of twelve consecutive months. The date on which the exemption request is granted by the board or the first day following the end of the prior extension limit of twelve consecutive months for which the exemption request is granted by the board, whichever is later, initiates time counted towards the limit of twelve consecutive months for the subsequent extension. A CalPERS-covered employer may request this exemption more than once.

(8) A report of the exemptions granted pursuant to paragraph (7) of this subdivision will be provided to the board annually and publicly available.

(9) A retired person who has served in an appointment for twenty-four consecutive months must not continue to serve in that appointment until the appointment is extended in accordance with this subdivision.

(10) Retired persons and CalPERS-covered employers in violation of this subdivision will be subject to Government Code sections 21202, 21220, and 7522.56, as applicable.

(b) For purposes of clarifying paragraph (3) of subdivision (a) of section 571, "limited duration" is defined as a limit of twenty-four consecutive months per appointment of an employee to an upgraded position/classification.

(1) For purposes of this subdivision, an appointment must be immediately subsequent to a permanent appointment held by an individual for the same upgraded position/classification.

(2) The appointment start date initiates time counted towards the limit of twenty-four consecutive months. Employment in an appointment to an upgraded position/classification prior to the effective date of this subdivision will not count towards the limit of twenty-four consecutive months.

Authority Cited: Sections 7522.02(j) and 20121, Government Code.
Reference: Sections 7522.56, 20636, 20636.1, 21202, 21220, 21224, and 21229, Government Code; section 571 of Title 2, California Code of Regulations.