

Sonoma County Office of Education  
Business Services

**EXTERNAL PAYROLL AND FINANCE UPDATES**  
**DEBUG MEETING: September 23, 2021**

**Reminders:**

- **Supplemental Paid Sick Leave (SPSL) ends 9/30/2021**
  - ❖ No expectation that this will be extended
  - ❖ <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>
  
- **COBRA Subsidy ends 9/30/2021 (IRS Notice 2021-31)**
  - ❖ If applicable to your LEA – journal entry posted monthly for this credit to object 9558 (Medicare)
  - ❖ RESIG provides invoice back-up for these credits
  - ❖ If your LEA uses a provider other than RESIG for health insurance and has paid COBRA out for employees, please contact me and I can work with you on getting a refund for this
  
- **Verify Sales Tax Rate on the CDTFA website compared to Escape!**
  - ❖ <https://maps.cdtfa.ca.gov/>
  - ❖ Below is an example of how to search for your LEA's tax rate based on location



## Find a Sales and Use Tax Rate

The image shows a screenshot of the California Department of Tax and Fee Administration's website. On the left is a search form with the following fields: 'Search by:' with radio buttons for 'Address' (selected) and 'My Location'; 'Enter an address below:' with a location pin icon; 'Street:' with the text '5340 Skylane Blvd.'; 'City:' with the text 'Santa Rosa'; 'State:' with a dropdown menu showing 'California'; and 'Zip:' with the text '95403'. Below the form is a 'Search' button and a small instruction: 'Type an address above and click "Search" to find the sales and use tax rate for that location. All fields required.' On the right is a map of Windsor, California, with a red pin indicating a tax rate of 8.500%. The map shows various streets and landmarks like Windsor River Rd, Keiser Park, Windsor Golf Course, and the Charles M. Schulz Sonoma Co. Airport.

- ❖ **In Escape** – Go to Finance → Setup → General → Fiscal to see your LEA’s current tax rate

Organization	State Tax	County Tax	Local Tax	AP Bank	Payroll Ban
School District	8.500	0.000	0.000	COUNTY	PAYROLL

- ❖ If your LEA has multiple tax rates, you can override the main tax rate:  
**In Escape** – System → Setup → Organizations – choose locations tab:

**System - Setup - Organizations**

List Form

Prev Next Close Cancel

General Setup Ledger Setup **Locations** Divisions Academic Departments Campuses JE Approvals

Open New Export Delete Prev Next Save/Close Cancel

**1 - Location Information**

Location	
Location Name	
Short Location Name	
CDS Code	6060669
Contact	
Contact Title	Principal
Phone #	(707) 792-4860
Phone Extension	
<b>Override Tax Rate</b>	<b>9.500</b>
Stores Delivery Day	
Portal Timesheet Admin	
Portal Timesheet School Component Code	
Comment	
Active	Yes

- ❖ If you find that your tax rate is incorrect, please correct in the system as soon as possible

## **NEW YEAR REMINDERS**

### **Use Tax**

Reminder to make sure vendors are charging the correct sales tax based on delivery location for your sites. Accounts Payable should be checking the rate charged and applying use tax if necessary.

### **Independent Contractor vs. Employees:**

Assembly Bill (AB) 5, replaced the common law test with the ABC test to determine whether a worker is an employee or independent contractor in California. (Effective January 1, 2020)

Hiring Entities are required to classify workers as employees unless they meet **all three** conditions of the ABC test below:

- ❖ A. I do not control or direct the performance or work of the contracted individual
- ❖ B. The individual is performing work outside the usual course of my business
- ❖ C. The individual has their own independently established business performing this work

### **Hiring CalSTRS Retirees:**

See Employer Directive 2021-06 dated August 30, 2021(attached) and use as a checklist for when hiring back a CalSTRS retiree. When hiring a CalSTRS retired annuitant for which it has been determined meets all three conditions of the ABC test as an independent contractor, additional forms need to be completed.

Ed Code 45134 prohibits employment in a classified position while a CalSTRS member is retired from service. The only exception is employment as a teacher's aide in certain circumstances as indicated below:

- As an instructional aide in a class with high pupil-teacher-ratio or an aide to provide one to one instruction in remedial classes or
- For underprivileged students

Postretirement earnings limit for 2021-22: \$48,428

Executive Order N-12-21 removed the governing body's approval requirement and the submission of a board resolution for retirees to return before their 180 day wait period for DB(defined benefit) members. This is still required for CB(Cash balance) participants seeking an exemption.

**IMPORTANT:** Attached Separation from Service Exemption Form must be filled out in order to bring back a CalSTRS retiree. This does not require board approval at this time, but does require the form to be filled out.

### **Hiring CalPERS Retirees:**

See Employer Checklist for Hiring CalPERS Retirees Effective January 1, 2013(attached)  
Remember CalPERS retirees can only be hired back for a limited duration (960 hours limit per fiscal year) and either during an emergency or because the retiree has skills needed to perform

work. Likewise, specific to schools, a single interim appointment to a vacant position during recruitment is within government code. Bear in mind, the retiree is still limited to work 960 hours in the fiscal year and there must be some showing the retiree has the skill needed to perform the work.

Please also be mindful that CalPERS retirees cannot receive any other form of compensation in addition to the hourly pay rate. Such additional compensation can impact the retiree's retirement benefit.

Executive Order N-12-21 suspends the following:

- ❖ 960-work hour per fiscal year limit
- ❖ Retirees employed in vacant positions under Gov. Code section 21221 can only be appointed to the position once
- ❖ 60-day bona fide separation in service
- ❖ 180-day wait period after retirement

The following post-retirement employment requirements continue to be in effect even with this order:

- ❖ If there was a retirement incentive accepted by the retiree, the retiree must still wait the 180 days before returning

CalPERS must be notified of any individual employed pursuant to these waivers. Notification should be emailed to: [ExecOrderReview@calpers.ca.gov](mailto:ExecOrderReview@calpers.ca.gov)

In order to bring back a retiree, the action needs to be board approved by each individual LEA.

### **Hiring Foreign Teachers:**

Individuals admitted to the US under an F-1, J-1 (most common), M-1 or Q-1 visa are generally exempt from both social security (OASDI) and Medicare taxes for 2 calendar years from the calendar year of entry. After which they become Resident Aliens and are liable for social security and Medicare taxes. There are special withholding rules and special computation of withholding for non-resident alien employees. Individuals may also qualify for a Tax Treaty Exemption if a treaty between the US and their home country actually exist.

### **Domestic Partners:**

See Legal Update Memo No 26-2019(attached) regarding the taxation of domestic partner fringe benefits. Depending on whether the employee's domestic partner is Registered or Non-Registered, requires different State taxation.

### **Confirm Missing Payroll CalPERS:**

Reminder – Please start to “confirm missing payroll” the end of this month (Sep 30, 2021)

1. Retired annuitants must be enrolled into CalPERS within 30 days of the effective date of hire and the retiree's payroll must be reported to CalPERS within 30 days following the last

day of the pay period in which the retiree worked. A \$200 late fee will incur for each offense for each retiree per month.

2. LEAs must confirm missing payroll to CalPERS on a monthly basis. Active members with no reported payroll within 30 days of the earned period end date and with no confirmed missing payroll, will be subject to projected contributions and a \$200 late fee.
  - a. Depending on the size of the LEA, projected contributions can be considerable
  - b. Generally, once the missing payroll is confirmed, the projected contributions will be removed
  - c. See instructions attached, these were emailed out and presented at the August DBUG

### **CALENDAR YEAR END REMINDERS:**

#### **W2 Preparation:**

1. Run the Pay31 W2 Errors report after each payroll and address errors now rather than later. There might be prior year payroll tax errors that cannot be corrected through payroll and will require manual edits to the W2. I will work with individual LEAs on these in January.
2. When an incorrect Social Security Number is discovered, email [helpdesk@scoe.org](mailto:helpdesk@scoe.org) and cc' [carend@scoe.org](mailto:carend@scoe.org). Do not send copy of SSN through email
3. When final payment is made to a deceased employee's estate in the same year the employee passed away, when creating pay history, a special addon may be necessary to decrease FIT and SIT subject wages. Please notify me of deceased employees and I can work with you to ensure correct handling of payroll taxes.
  - a. [https://www.scoe.org/files/Deceased\\_Employees\\_-\\_Revised\\_10-2020.pdf](https://www.scoe.org/files/Deceased_Employees_-_Revised_10-2020.pdf)
4. OASDI errors (OASDI wasn't deducted and should have been, or OASDI was deducted and shouldn't have been), requires special handling to correct. Best practice is to run and review the Pay03 by Person Type. This serves as a quick review of employees with OASDI deductions.
5. Generally, classified employees should have OASDI deducted (there are exceptions depending on the LEA's Section 218 Agreement and/or whether the classified employee elected to remain in CalSTRS or if the classified employee is a CalPERS retiree)
6. Generally, Certificated CalSTRS members should not have OASDI deducted unless the certificated employee elected to remain in CalPERS or is a CalSTRS retired annuitant.
7. Please remind employees to update their addresses if they have moved

#### **1099 Preparation:**

1. Be mindful of the ABC test. Under the ABC test, a worker is presumed to be an employee unless the employer can show all three conditions of the ABC test are met
2. Foreign and California Nonresident vendors require special Escape set up and special payment and reporting
  - a. [https://www.scoe.org/files/Foreign\\_and\\_CA\\_Nonresident\\_Alien\\_Vendors\\_and\\_Wire\\_Transfers.pdf](https://www.scoe.org/files/Foreign_and_CA_Nonresident_Alien_Vendors_and_Wire_Transfers.pdf)

3. When final payment is made to a deceased employee's estate after the year the employee passed away, pay history is not created. Vendor (Employee's Estate) should be set up for 1099=Yes and payment is run through Accounts Payable. Please notify me of deceased employees and I can work with you to ensure correct handling.

## **Retirement Appointment Reconciliation on CalPERS website**

Confirm unposted payroll on a **monthly** basis

- Step 1 From the My Home page, select the **Reporting** global navigation tab
- Step 2 Select **Retirement Appointment Reconciliation** local navigation link
- Step 3 Select your **Division** from the division drop down
- Step 4 Select **Yes** from the **Payroll Past Due** drop down (on the right)
- Step 5 Select the **Search** button
- Step 6 A listing of participants with unposted payroll will appear. If there is more than one page, select **View Max** link at the bottom of the page
- Step 7 Select the **Review** link on the right side of the screen for the appropriate appointment
- Step 8 **Optional:** Open multiple windows to research the employee
- Step 9 Within the Unposted Payroll Periods section, select the appropriate earned period check box(es) that you want to confirm unposted payroll.
- Step 10 Select the **Confirm** button
- Step 11 Select the **Return** link

After you have confirmed that an earned period has unposted payroll, myCalPERS will stop requesting payroll reporting for that period. You may still report payroll for earned periods that have been confirmed.



# IRS reminds business owners to correctly identify workers as employees or independent contractors

IR-2021-186, September 15, 2021

WASHINGTON — During [National Small Business Week](#), the Internal Revenue Service reminds business owners that it's critical to correctly determine whether the individuals providing services are employees or independent contractors.

An employee is generally considered to be anyone who performs services, if the business can control what will be done and how it will be done. What matters is that the business has the right to control the details of how the worker's services are performed. Independent contractors are normally people in an independent trade, business or profession in which they offer their services to the public. Doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers or auctioneers are generally independent contractors.

## Independent contractor vs. employee

Whether a worker is an independent contractor or an employee depends on the relationship between the worker and the business. Generally, there are three categories to examine:

- **Behavioral Control** – Does the company control or have the right to control what the worker does and how the worker does the job?
- **Financial Control** – Does the business direct or control the financial and business aspects of the worker's job. Are the business aspects of the worker's job controlled by the payer? (Things like how the worker is paid, are expenses reimbursed, who provides tools/supplies, etc.)
- **Relationship of the Parties** – Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

## Misclassified worker

Misclassifying workers as independent contractors adversely affects employees because the employer's share of taxes is not paid, and the employee's share is not withheld. If a business misclassified an employee without a reasonable basis, it could be held liable for employment taxes for that worker. Generally, an employer must

withhold and pay income taxes, Social Security and Medicare taxes, as well as unemployment taxes. Workers who believe they have been improperly classified as independent contractors can use IRS [Form 8919, Uncollected Social Security and Medicare Tax on Wages](#) to figure and report their share of uncollected Social Security and Medicare taxes due on their compensation.

## Voluntary Classification Settlement Program

The [Voluntary Classification Settlement Program \(VCSP\)](#) is an optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat their workers (or a class or group of workers) as employees. Taxpayers must meet certain eligibility requirements, apply by filing [Form 8952, Application for Voluntary Classification Settlement Program](#), and enter into a closing agreement with the IRS.

## Who is self-employed?

Generally, someone is self-employed if any of the following apply to them.

- They carry on a trade or business as a [sole proprietor](#) or an [independent contractor](#).
- They are a member of a [partnership](#) that carries on a [trade or business](#).
- They are otherwise in business for themselves (including a [part-time business](#)).

Self-employed individuals generally are required to file an annual tax return and pay estimated tax quarterly. They generally must pay self-employment tax (Social Security and Medicare tax) as well as income tax. Self-employed taxpayers may be able to claim the [home office deduction](#) if they use part of a home for business.

## What about the gig economy?


The [gig economy](#) – also called sharing economy or access economy—is activity where people earn income providing on-demand work, services or goods. **Gig economy income** must be reported on a tax return, even if the income is: from part-time, temporary or side work; not reported on a Form 1099-K, 1099-MISC, W-2 or other income statement; or paid in any form, including cash, property, goods or virtual currency.

## Help spread the word - Advance Child Tax Credit

The IRS encourages employers to help get the word out about the [advance payments of the Child Tax Credit](#) during Small Business Week. Employers have direct access to many who may receive this credit. More information on the Advance Child Tax Credit is available on IRS.gov. The website has [tools employers can use](#) to deliver this information, including e-posters, drop-in articles (for paycheck stuffers, newsletters) and social media posts to share.

## For more information and help

The [Self-Employed Individuals Tax Center](#) has information for those who are in an independent trade, business or profession in which they offer their services to the general public.

[Small Business Taxes: The Virtual Workshop](#)  is composed of nine interactive lessons designed to help new small business owners learn their tax rights and responsibilities.

The [IRS Video Portal](#) contains video and audio presentations on topics of interest to small businesses, individuals and tax professionals.

*Page Last Reviewed or Updated: 15-Sep-2021*



California State Teachers' Retirement System  
Executive Office  
PO Box 15275  
Sacramento, CA 95851-0275  
**800-228-5453**  
CalSTRS.com

August 30, 2021

**TO:** All County Superintendents of Schools  
District Superintendents of Schools  
Charter School Administrators  
Community College Districts  
Other Employing Agencies

**FROM:** Cassandra Lichnock  
Chief Executive Officer

**SUBJECT:** Employer Directive 2021-06  
***Supersedes Employer Directive 2021-03 & Employer Information Circular 16-3***  
Postretirement Earnings Limit and Disability Allowance Earnings Limit for the  
2020–21 and 2021–22 Fiscal Years, and Disability Retirement Earnings Limit for  
the 2021 Calendar Year

## **PURPOSE**

This employer directive is intended to inform and remind employers of:

- The application of the earnings limit for retired DB members.
- The annual postretirement earnings limit for the 2020–21 fiscal year.
- The annual postretirement earnings limit for the 2021–22 fiscal year.
- The postretirement separation-from-service requirement for retired DB members and retired CB participants during the first 180 calendar days from their retirement date with CalSTRS.
- State of Emergency and postretirement earnings limitations.
- Requirements for requesting an exemption from the separation-from-service requirement.
- Restriction on hiring retired DB members and retired CB participants in classified positions.
- Retirement incentive restrictions.
- Requirements for employer communication regarding the earnings limits and, if applicable, the retirement incentive restrictions when hiring retired DB members. Also, the employer requirements regarding maintaining accurate records and reporting postretirement earnings to CalSTRS.
- The CalSTRS postretirement excess earnings notification process.
- The disability retirement earnings limit for the 2021 calendar year.
- The disability allowance earnings limit for the 2020–21 and 2021–22 fiscal years.

## SCOPE

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts and any agency that employs retired members of the Defined Benefit (DB) Program (referred to in this directive as “retired DB members”) or retired participants of the Cash Balance (CB) Benefit Program (referred to in this directive as “retired CB participants”) to perform retired member or participant activities or that employs CalSTRS members receiving either a Disability Allowance or a Disability Retirement benefit in any capacity.

## DISCUSSION

### Application of Postretirement Earnings Limits

Sections 24214 and 24214.5 of the Education Code impose limitations on retired DB members who return to work and perform retired member activities. Section 22164.5 of the Education Code defines “retired member activities” as one or more of the activities identified in subdivision (b), (c) or (d) of Education Code section 22119.5 or subdivision (b), (c) or (d) of Education Code section 26113 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor, including as a consultant, within the California public school system.

Section 26812 of the Education Code imposes limitations on retired CB participants who return to work and perform retired participant activities. Section 26135.7 of the Education Code defines “retired participant activities” as one or more of the activities identified in subdivision (b), (c) or (d) of Education Code section 22119.5 or subdivision (b), (c) or (d) of Education Code section 26113 when performed as either an employee of an employer, an employee of a third party (except under certain circumstances) or an independent contractor, including as a consultant, within the California public school system.

The annualized rate of pay for retired member activities or retired participant activities may not be less than the minimum, nor can it exceed the maximum, paid by the employer to other employees performing comparable duties.

Notable differences between reportable compensation in active membership and postretirement employment include:

- Education Code section 22164.5, subdivisions (a)(2) and (3).
- Education Code section 24214, subdivision (f)(2).
- Education Code section 24214.5, subdivision (a)(2).
- Education Code section 26135.7, subdivisions (a)(2) and (3).
- Education Code section 26812, subdivision (d)(2).

Retired DB members and retired CB participants employed by a third party are excluded from the postretirement earnings limits and related provisions provided they meet *all* of the following criteria:

- The retired DB member or retired CB participant is employed by a third-party employer that does not participate in a California public pension system.
- The activities performed by the retired DB member or retired CB participant are not normally performed by employees of an employer.
- The retired DB member or retired CB participant performs an assignment of 24 months or less.

Employer reporting of retired DB members and retired CB participants who are employed by a third party under the narrow conditions above is not required. CalSTRS has not identified any example of service that would meet these criteria.

#### Annual Postretirement Earnings Limit for the 2020–21 and 2021–22 Fiscal Years

The postretirement earnings limit for retired DB members for the 2020–21 fiscal year is \$47,713.

The postretirement earnings limit for retired DB members for the 2021–22 fiscal year is \$48,428.

Pursuant to Education Code section 24214, the limit is adjusted annually by CalSTRS and is equal to one-half of the median final compensation amount for all members who retired for service during the fiscal year ending in the previous calendar year.

If a retired DB member earns compensation for performing retired member activities in excess of the annual postretirement earnings limit, Education Code section 24214(g) requires CalSTRS to reduce the member's retirement benefit dollar for dollar, until the member has repaid the amount of compensation that was earned in excess of the annual earnings limit. The amount of the reduction in an individual month shall be no more than the monthly allowance payable in that month, and the total amount of the reduction shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned after any reductions due to the separation-from-service requirement.

There is no annual earnings limit for retired CB participants.

#### Separation-From-Service Requirement

Pursuant to Education Code section 24214.5, there is a 180-calendar day separation-from-service requirement for all retired DB members, regardless of age, during which the postretirement compensation limit for the performance of retired member activities is zero dollars (\$0).

If a retired DB member earns compensation for performing retired member activities during the 180-calendar day separation-from-service period, Education Code section 24214.5(h) requires CalSTRS to reduce the member's retirement benefit dollar for dollar, until the member has repaid the amount of compensation that was earned during the separation-from-service period. The amount of the reduction in an individual month shall be no more than the monthly allowance

payable in that month, and the total amount of the reduction shall not exceed the amount of the allowance payable during the first 180 calendar days after the most recent retirement date.

This restriction is in addition to the annual postretirement earnings limit. Any amount the retired DB member receives during the first 180 calendar days of retirement will also count against the annual postretirement earnings limit for the appropriate fiscal year.

Pursuant to Education Code section 26812, the 180-calendar day separation-from-service requirement applies to Cash Balance Benefit Program annuitants, regardless of age.

Pursuant to Education Code section 26806, if a retired CB participant receives a lump-sum retirement benefit, the benefit is not payable until 180 calendar days after the date employment was terminated. If a participant electing a lump-sum benefit performs creditable service during the 180-calendar day separation-from-service period, the retirement application will be automatically canceled.

#### State of Emergency and Postretirement Earnings Limitations

The Education Code does not contain provisions to waive postretirement earnings restrictions during a state of emergency declared by the Governor. Without these provisions or specific inclusion in an Executive Order, Education Code section 24214 governing the annual postretirement earnings limitation and Education Code section 26812 governing the Cash Balance Benefit Program separation-from-service requirement are not suspended and are still in effect. On August 16, 2021, Governor Newsom issued Executive Order N-12-21, which maintains the 180-calendar day separation-from-service requirement governed by Education Code section 24214.5, but streamlines the CalSTRS exemption process for requesting retired DB members be able to return to work within 180 calendar days of their retirement.

#### Exemption to the Separation-From-Service Requirement

There is a narrow exemption from the 180-calendar day separation-from-service requirement for a retired DB member or retired CB participant under certain circumstances. Executive Order N-12-21 removed the governing body's approval requirement and the submission of a board resolution for retired DB members. Governing body approval and submission of a board resolution is still required for retired CB participants who are seeking an exemption. All other requirements outlined in Education Code sections 24214.5 and 26812 must be met.

To qualify for this exemption:

- The retired DB member or retired CB participant must not begin performing retired member or participant activities until CalSTRS receives all required documentation.
- The retired DB member or retired CB participant must be at or above normal retirement age at the time the compensation is earned (age 60 for a CalSTRS 2% at 60 member and participant not subject to the California Public Employees' Pension Reform Act of 2013 [PEPRA], and age 62 for CalSTRS 2% at 62 members and participants subject to PEPRA).

- The appointment is necessary to fill a critically needed position and must be filled before the retired DB member's or retired CB participant's 180-calendar day separation-from-service period has passed since the member's or participant's most recent retirement date.
- The termination of employment of the retired DB member or retired CB participant with the employer must not be the basis for the need to acquire the services of the member or participant.
- The retired DB member or retired CB participant must not have received a retirement incentive or any financial inducement to retire from any public employer.

Education Code sections 24214.5 and 26812 clarify what constitutes a "financial inducement to retire" that would prohibit a retired DB member or retired CB participant from being eligible for an exemption from the separation-from-service requirement. "Financial inducement to retire" includes, but is not limited to, any form of compensation or other payment that is paid directly or indirectly by a public employer to the member, even if not in cash, either before or after retirement, if the participant retires for service on or before a specific date or specific range of dates established by a public employer on or before the date the inducement is offered.

When applying for the separation-from-service requirement exemption, the superintendent, the county superintendent of schools or the chief executive officer of a community college must complete the *Request for Separation-From-Service Requirement Exemption* (SR-1897) form, which is available in "Reference Items" on the Secure Employer Website. In accordance with Executive Order N-12-21, please use the available form with revision date 08/2021. This form has been updated in accordance with Executive Order N-12-21, which waves the requirement that the governing board adopt a resolution authorizing a retired DB member to be exempt from the limitation under subdivision (a) of Education Code section 24214.5. Unless the provision in the Executive Order is withdrawn, it remains in effect through the duration of the Governor's COVID-19 State of Emergency or until canceled, revoked, withdrawn, superseded or adjudicated unlawful. CalSTRS must receive this form indicating the above information to substantiate the eligibility of the retired DB member or retired CB participant for the exemption before the member or participant begins performing service under the exemption.

CalSTRS must notify the employer and the retired DB member or retired CB participant within 30 days of receiving the required documentation whether the activities performed will be subject to or exempt from the 180-calendar day separation-from-service requirement.

If the separation-from-service requirement exemption is approved, the retired DB member will only be exempt from the separation-from-service requirement. Any earnings during the 180-calendar day period will still be subject to the annual postretirement earnings limit for a retired DB member. For the retired CB participant, whose separation-from-service exemption is approved, the exemption is applicable to the separation-from-service requirement only since there is no annual earnings limit for retired CB participants.

### Classified Position Restrictions

Education Code section 45134 precludes retired DB members and retired CB participants from employment in classified positions in the California public school system except for as an aide in certain circumstances.

### Retired CalPERS Postretirement Employment Restrictions

If the employee is a CalSTRS and CalPERS member, ask the employee to contact CalPERS at 888-225-7377 to determine the impact that returning to work would have on the CalPERS benefit.

### Retirement Incentive Restrictions

Members who retired with a CalSTRS retirement incentive under Education Code section 22714 will lose the increased service credit attributable to the retirement incentive if they return to employment within five years of receiving the incentive in any job, including substitute teaching or consulting, as an employee, independent contractor or employee of a third party with the school district, community college district or county office of education that granted the retirement incentive.

### Employer Requirements for Notification of Postretirement Earnings Limits and Employment Restrictions, and Required Reporting of Postretirement Earnings

Upon retaining the services of a retired DB member, Education Code section 22461 requires employers to notify the member of the earnings limitations and the employment restrictions for those who receive retirement incentives, regardless of whether the retired DB member performs the services as an employee of the employer, an employee of a third party or an independent contractor, including as a consultant. Employers must also report the retired member's earnings to CalSTRS each month. All postretirement earnings must be reported with Member Code 2 and Assignment Code 61.

### CalSTRS Postretirement Excess Earnings Notification Process

CalSTRS sends an *Initial Postretirement Earnings Letter* to the retired DB member when postretirement earnings are initially reported by the employer. The *Initial Postretirement Earnings Letter* informs the member of the current earnings limit and describes what occurs if the limit is exceeded. When the employer reports postretirement earnings equal to one-half of the annual postretirement earnings limit, CalSTRS sends a second letter, the *Postretirement Earnings Mid-Limit Letter*, notifying the member of the dollar amount reported to date and reminding the member of the consequences of exceeding the earnings limit.

When a retired DB member or retired CB participant violates the 180-calendar day separation-from-service requirement or a retired DB member exceeds the annual postretirement earnings limit, CalSTRS sends a letter notifying the member or participant that the excess earnings will be withheld from the applicable monthly retirement benefit. CalSTRS gives at least a 30-day notice before commencing collection. If the earnings were reported to CalSTRS in error, the employer is responsible for correcting the previous reporting and notifying CalSTRS that corrected contribution lines were submitted.

Application and Amount of the 2021 Disability Retirement Earnings Limit

The disability retirement earnings limit for the 2021 *calendar* year is \$32,850. The limit applies to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector. The limit is adjusted annually by the Teachers' Retirement Board, if necessary, by the amount of change in the California Consumer Price Index.

Application and Amount of the 2020–21 and 2021–22 Disability Allowance Earnings Limit

The disability allowance earnings limit for the 2020–21 and 2021–22 *fiscal* years is calculated individually for each member based on the member's indexed final compensation amount. Members receiving a disability allowance benefit are also subject to individual monthly and continuous six-month earnings limits based on the member's indexed final compensation. The various limits apply to all earnings regardless of whether the member is self-employed or employed in any capacity in either the public or private sector.

**SUMMARY OF REQUIRED ACTIONS**

In accordance with Education Code section 22461, upon retaining the services of a retired DB member either as an employee of an employer, an employee of a third party or an independent contractor, including as a consultant, within the California public school system, the employer is required to:

- ✓ Notify the retired DB member of all earnings limits and the retirement incentive employment restrictions, if applicable.
- ✓ Maintain accurate records of the retired DB member's earnings.
- ✓ Report those earnings to the retired DB member and to CalSTRS monthly, using Member Code 2 and Assignment Code 61, regardless of the method of payment or the fund from which the payments were made.

To learn more about postretirement earnings limitations, visit [CalSTRS.com/general-information/working-after-retirement](https://www.calstrs.com/general-information/working-after-retirement). If you have questions regarding the service retirement postretirement earnings limits, contact us by email at [postretirement@calstrs.com](mailto:postretirement@calstrs.com) or leave a voicemail at 916-414-5967. For questions regarding the disability allowance or disability retirement earnings limits, email [DaSBDisabilitySvcsMlbx@CalSTRS.com](mailto:DaSBDisabilitySvcsMlbx@CalSTRS.com) or leave a voicemail at 916-414-5785.

# Request for Separation-From-Service Requirement Exemption—Information and Instructions

This form has been updated in accordance with Executive Order N-12-21 waiving the requirement that the governing board adopt a resolution authorizing a retired member to be exempt from the limitation under subdivision (a) of Education Code section 24214.5. The Executive Order does not apply to Education Code section 26812, regarding retired participants under the Cash Balance Benefit Program. Unless the provision in the Executive Order is withdrawn, it remains in effect through the duration of the Governor's COVID-19 State of Emergency or until canceled, revoked, withdrawn, superseded or adjudicated unlawful.

Read the instructions carefully before completing the form.

**NOTE:** The retired member will be subject to the separation-from-service requirement unless all sections of this form are completed, the minimum requirements for an exemption are met, and CalSTRS approves the exemption.

Use this form to request an exemption from the separation-from-service requirement, also known as the zero-dollar earnings limit, for an eligible CalSTRS retired member who has reached normal retirement age (age 60 for CalSTRS 2% at 60 members; age 62 for CalSTRS 2% at 62 members).

## MINIMUM REQUIREMENTS

- CalSTRS must receive the exemption form prior to the retired member performing retired member activities.
- The retired member must be of normal retirement age when the compensation is earned.
- The appointment is necessary to fill a critically needed position and must be filled before the retired member's 180-calendar day separation-from-service period has passed since the member's most recent retirement date.
- The retired member did not receive any financial inducement to retire from any public employer, including, but not limited to, receiving additional service credit through the CalSTRS Retirement Incentive Program. "Financial inducement to retire" includes, but is not limited to, any form of compensation or other payment that is paid directly or indirectly by a public employer to the member, even if not in cash, either before or after retirement, if the participant retires for service on or before a specific date or specific range of dates established by a public employer on or before the date the inducement is offered.
- The retired member's termination of employment is not the basis for the need to acquire the services of the member.

## EXEMPTION START AND END DATE

The exemption start date is the first day of employment in the position, no earlier than the date CalSTRS receives this form. The exemption end date is no later than 180 calendar days after the member's most recent retirement date.

## COMPLETING THIS FORM

This form should be completed by the appointing authority unless otherwise stated. Print clearly in dark ink or type all information requested. Initial all corrections and sign on the last page.

## SECTION 1 – MEMBER INFORMATION

Enter the member's full name and Client ID or Social Security number. Include the member's mailing address, work telephone number and email address so we may contact them if we have any questions.

## SECTION 2 – POSITION INFORMATION

Enter the title and salary for the position. Enter the exemption period start and end date for the position.

## SECTION 3 – EMPLOYER INFORMATION

Enter the information related to the school district, county office of education or community college district employing the member. Include the mailing address, work telephone number and email address so we may contact you if we have any questions. Enter the appropriate five-digit county and district codes. Example: Kern County, Edison, would be 15-012. Contact your CalSTRS liaison if you are unsure of your code.

## SECTION 4 – CERTIFICATION

Fully read each statement and enter your initials as the appointing authority next to each statement to certify you met the minimum requirements for the exemption.

## SECTION 5 – REQUIRED SIGNATURES

Have the retired member sign and date the Member's Signature line. Sign and date as the appointing authority on the form. The appointing authority's signature must be signed and dated by the superintendent, the county superintendent of schools or the chief executive officer of a community college.

**CalSTRS must notify the employer and the retired DB member within 30 days of receiving the required documentation whether the activities performed will be subject to or exempt from the 180-calendar day separation-from-service requirement. Submission of this form does not guarantee application of the exemption.**

A separation-from-service requirement exemption is not an exemption from the fiscal year postretirement earnings limit. Visit [CalSTRS.com](http://CalSTRS.com) for more information about working after retirement restrictions and limits.

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# Request for Separation-From-Service Requirement Exemption

SR 1897 rev 08/21

# CALSTRS®

California State Teachers' Retirement System  
 P.O. Box 15275, MS 60  
 Sacramento, CA 95851-0275  
 800-228-5453  
 CalSTRS.com

<b>For CalSTRS Use Only</b> CalSTRS Representative	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
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<b>Section 1: Member Information</b> – This section is to be completed by the retired member or the appointing authority.			
NAME (LAST, FIRST, INITIAL)		CLIENT ID OR SOCIAL SECURITY NUMBER	
MAILING ADDRESS			
CITY		STATE	ZIP CODE
EMAIL ADDRESS			WORK TELEPHONE

<b>Section 2: Position Information</b> – This section is to be completed by the appointing authority.		
Position Title:	<b>Exemption Start Date</b> No earlier than the date CalSTRS receives this form (MM/DD/YYYY):	<b>Exemption End Date</b> No later than 180 calendar days after the member's most recent retirement date (MM/DD/YYYY):
Position Salary (Annual):	/ /	/ /

<b>Section 3: Employer Information</b> – This section is to be completed by the appointing authority.			
□ □ - □ □ □			
COUNTY AND DISTRICT CODE (FIVE DIGITS)		EMPLOYING AGENCY'S NAME	
EMPLOYER ADDRESS	CITY	STATE	ZIP CODE
EMPLOYER CONTACT NAME		( )	ext.
EMPLOYER TELEPHONE			EMPLOYER TELEPHONE
EMPLOYER EMAIL ADDRESS			COUNTY WHERE EMPLOYER IS LOCATED

*Continued on next page*



**Section 4: Certification** – This section is to be completed by the appointing authority.

I have read and fully understand the instructions for the exemption certification for separation-from-service requirement of a retired member as outlined in Education Code section 24214.5. I fully certify that (please initial each):

- The retired member is of normal retirement age when the compensation is earned.
- The appointment is necessary to fill a critically needed position and must be filled before the retired member's 180-calendar day separation-from-service period has passed since the member's most recent retirement date.
- The retired member did not receive any financial inducement to retire from any public employer, including, but not limited to, receiving additional service credit through the CalSTRS Retirement Incentive Program.
- The retired member's termination of employment is not the basis for the need to acquire the services of the member.

**Section 5: Required Signatures** – This section is to be completed by the member and the appointing authority.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I understand that perjury is punishable by imprisonment for up to four years (Penal Code section 126).

I understand it is a crime to fail to disclose a material fact or to make any knowingly false material statements for the purpose of altering a benefit administered by CalSTRS and it may result in penalties, including restitution, up to one year in jail and/or a fine of up to \$5,000 (Education Code section 22010).

I understand if CalSTRS does not approve this exemption that I, the member, will be subject to the earnings limit outlined in Education Code section 24214.5.



MEMBER'S SIGNATURE

SIGNATURE DATE (MM/DD/YYYY)



APPOINTING AUTHORITY'S SIGNATURE

SIGNATURE DATE (MM/DD/YYYY)

(To be signed by the superintendent, the county superintendent of schools or the chief executive officer of a community college.)

**CalSTRS must notify the employer and the retired DB member within 30 days of receiving the required documentation whether the activities performed will be subject to or exempt from the 180-calendar day separation-from-service requirement. Submission of this form does not guarantee application of the exemption.**



California Public Employees' Retirement System  
P.O. Box 942715 | Sacramento, CA 94229-2715  
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

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## Announcements

# Circular Letter

September 13, 2021

Circular Letter: 200-056-21

Distribution: IV, V, VI, X, XII, XVI

**To:** All CalPERS Employers  
**Subject:** Governor's Executive Order N-12-21

### Purpose

The purpose of this Circular Letter is to inform you of Executive Order N-12-21, which suspends Government (Gov.) Code section 7522.56(f), the 180-day break in service requirement, for CalPERS retirees seeking employment as a retired annuitant with a CalPERS employer to ensure adequate staffing in response to COVID-19, until further notice.

### Background

On August 16, 2021, Governor Gavin Newsom issued Executive Order N-12-21, which amended some of the previously reinstated working after retirement rules for those retired annuitants employed to address the rising case rates caused by the COVID-19 delta variant to ensure adequate staffing.

### Summary of Impacts

Executive Order N-12-21 is the third Executive Order issued by the governor providing direction on the hiring of retired annuitants for ensuring adequate staffing for COVID-19. The following suspensions are in effect:

- 960-work hour per fiscal year limit
- Retirees employed in vacant positions under Gov. Code section 21221(h) can only be appointed to the position once
- 60-day bona fide separation in service

- 180-day wait period after retirement

However, note the following post-retirement employment requirement continues to be in effect (after being reinstated by Executive Order N-08-21, effective July 1, 2021):

- If a retirement incentive was received, retirees must wait 180 days before returning to work.

### **180-Day Wait Period Exception**

Under Executive Order N-25-20, the 180-day break in service requirement under Gov. Code section 7522.56(f) and (g) were suspended for retired annuitants hired to ensure adequate staffing during the state of emergency. Executive Order N-08-21 reinstated these requirements. The most recent Executive Order N-12-21 suspends the 180-day wait requirement again for appointments that begin on or after July 1, 2021. If a retiree is needed to return to work prior to waiting 180 days from their retirement date to ensure adequate staffing, then the retiree can return to work as part of Executive Order N-12-21.

For state agencies, the director of the California Department of Human Resources (CalHR) must be notified of any individual employed pursuant to these waivers. Notification should be emailed to [CalHR's California State of Emergency mailbox](#). Public agencies and schools must notify CalPERS of any individual employed pursuant to these waivers. Notification should be emailed to [CalPERS' Executive Order Review mailbox](#).

For retired annuitant appointments that begin on or after July 1, 2021, retirees that received a retirement incentive must wait 180 days prior to returning to work as a retired annuitant with no exceptions. Executive Order N-12-21 did not lift this requirement.

### **Work Hour Limitation**

On March 4, 2020, the governor declared a statewide state of emergency due to the COVID-19 pandemic. The governor issued Executive Order N-25-20 to further enhance California's ability to respond to COVID-19. Consistent with applicable federal law, and to ensure adequate state staffing to expedite emergency response and recovery, the work hour limitations under Gov. Code section 7522.56(d) were suspended.

The suspension of the work hour limitation is still in effect. Any hours worked by a retired annuitant to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal year. The work hour limitations for retired annuitants are suspended from the date the state of emergency was declared until further notice.

## **Appointment to Vacant Positions**

On December 14, 2020, the governor signed into effect Executive Order N-84-20. Paragraph four of this order allowed for the suspension of the 960-hour limitation under Gov. Code section 21221(h). Along with the suspension of the hours, this order also allows for retirees to be appointed more than once to the same vacancy under Gov. Code section 21221(h). This portion of the order will remain in effect until further notice.

## **Bona Fide Separation**

The suspension of the 60-day separation in service is still in effect. Under subdivision (c) of section 586.2 of Title 2 of the California Code of Regulations (CCR), the declaration of a state of emergency exempts retired annuitants from the 60-day separation in service requirement under subdivision (a)(2) of CCR section 586.2. However, the prohibition under subdivision (a)(1) of CCR section 586.2 on any predetermined agreement between an employer and an impending retiree who has not attained normal retirement age continues to remain in effect consistent with federal law.

## **Continued Compliance**

Agencies must continue to enroll and report retired annuitants to CalPERS. The remaining working after retirement provisions in Gov. Code sections 21221(h), 21224(a), and 7522.56(e) will continue to apply:

- Compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate.
- A retired annuitant shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

CalPERS will continue to monitor the work hours for retired annuitants and send communication to confirm when a violation is found and whether it complies with working after retirement policies.

## **Questions**

If you have any questions, call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

Renee Ostrander, Chief  
Employer Account Management Division

# **EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES**

## **Effective January 1, 2013**

### **POST-RETIREMENT EMPLOYMENT BASICS:**

Generally, if the position in which a retiree will work is one that is subject to CalPERS membership where an active employee would earn CalPERS service credit, i.e. there is an employer-employee relationship, then a retiree hired to work in that position is subject to the retirement law requirements.

The common law employment test is used by the courts and CalPERS Board of Administration to determine "employee" or "independent contractor" status under the PERL. Under this test, a position title or characterization of the services performed is not the only determining factor of employee / independent contractor status. Just because a retiree is retained for a position that is called an independent contractor, consultant or third-party employer position, does not necessarily mean employment in that position is exempt from the retired annuitant requirements. Therefore, a retiree retained to work as an "independent contractor", "consultant", or through a "third party employer" in any position that would meet the common law employment test may be subject to mandatory reinstatement from retirement if the employment does not otherwise meet the retirement law requirements.

A retiree hired as an independent contractor, consultant, or contract employee through a third party employer to work in any position that would meet the common law employment control test would be inappropriately appointed under the retirement law and could be subject to mandatory reinstatement from retirement if the employment does not otherwise meet the retirement law requirements.

- **RETIRED ANNUITANT APPOINTMENTS:** CalPERS retirees cannot be hired into permanent or regular staff positions without reinstatement from retirement. Retirees should be hired into retired annuitant-designated positions only. These appointments are authorized during an emergency to prevent stoppage of public business or because the retiree has skills needed to perform work of limited duration. Since emergencies that would cause stoppage of public business are rare, e.g., disasters such as floods, earthquakes, etc., these appointments are generally those requiring skills needed to perform work of limited duration.
- **INDEPENDENT CONTRACTORS, CONSULTANTS AND CONTRACT EMPLOYEES THROUGH THIRD PARTY EMPLOYERS:** If you, the employer, hire a CalPERS retiree as an independent contractor, consultant or through a third party employer and the employment constitutes a common law employment (employer-employee) relationship, the employment is subject to the retirement law requirements and he or she must be enrolled as a retired annuitant in the myCalPERS system. If the employment is truly an independent contractor or consultant or is truly as an employee of a third party employer, i.e., a common law employer-employee relationship does not exist with the CalPERS employer, then the employment is exempt from the post-retirement employment requirements.

# **EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES**

## **Effective January 1, 2013**

- **POST-RETIREMENT EMPLOYMENT AUDIT REVIEW:** The CalPERS Office of Audit Services (OAS) Public Agency Audit Program reviews the hiring and employment of CalPERS retirees at all employers to ensure compliance with the requirements prescribed by the applicable sections of the California Government Code.
- **ENROLLMENT AS A RETIRED ANNUITANT:** The retiree must be enrolled as a retired annuitant in the my|CalPERS system, either directly in my|CalPERS or, for state agencies, through the Personnel Information Management System (PIMS).

### **ELIGIBILITY REQUIREMENTS BEFORE HIRING A RETIREE:**

#### **1. BONA FIDE SEPARATION IN SERVICE REQUIREMENT:**

All Retirees: If a retiree is under normal retirement age at retirement, he or she cannot be hired for post-retirement employment without a bona fide separation from employment. The normal retirement age is the highest benefit formula age, e.g., age 55 for the 2% @ 55 formula. If there is more than one formula applicable to the retirement, e.g., the allowance has service based on both the 2% @ 55 and the 2% at 60 formula, the normal retirement age is the highest benefit formula age, or age 60, in this example. Members and retirees can look up their benefit formulas through their my|CalPERS online account or on their most recent CalPERS Annual Member Statement.

A bona fide separation must meet both of the following conditions:

- **There is no pre-determined agreement:** Prior to retirement, there was no agreement, written or verbal, between the employer and the member to work after retirement.
- **There is a 60 day separation from employment:** There is a period of 60 calendar days between the retirement date and the post-retirement employment date.

This requirement is a federal tax law and we, CalPERS, must comply with it to maintain our tax-deferred status.

#### **2. UNEMPLOYMENT INSURANCE PAYMENT QUALIFICATION:**

Upon accepting an offer of employment, every retiree must certify in writing to the employer that he or she did not receive any unemployment insurance payments within the 12 months prior to this appointment for previous retired annuitant work with any CalPERS employer.

If after hiring a retiree, you, the employer, discover the retiree did receive unemployment insurance payments, as above, within the 12 months prior to the current appointment date, you must terminate the employment on the last day of the current

## **EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES**

### **Effective January 1, 2013**

pay period and that retiree is not eligible for reappointment by any CalPERS employer for 12 months following the last day of employment.

#### **3. 180 DAY WAIT PERIOD BETWEEN RETIREMENT DATE & HIRE DATE:**

All retirees must wait 180 days after their retirement date before he or she is eligible to begin post-retirement employment. This means a retiree cannot begin employment until the 181<sup>st</sup> day after his or her retirement date. There are four exceptions to the 180 day wait period requirement:

##### 180 Day Wait Period Exceptions:

- **Firefighter or public safety officer:** The retiree is a firefighter or public safety officer, as determined in accordance with the definition set forth in California Code of Regulations 579.25, hired to perform a function or functions regularly performed by a public safety officer or firefighter.
- **Public agency or school employer certification and resolution:** The public agency or school employer must certify the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days has passed and, the appointment must be approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.

For school employers, the school district's county office of education is the governing body that must pass this resolution.

The certification and resolution should be received by CalPERS prior to the retiree's hire date. Email the certification and resolution to the mailbox [BNSD\\_Post\\_Retirement\\_Administration@calpers.ca.gov](mailto:BNSD_Post_Retirement_Administration@calpers.ca.gov) or mail it to Post Retirement Administration, Benefit Services Division, PO Box 942711, Sacramento, CA 94229-2711.

- Sample resolutions with instructions are available online at [www.calpers.ca.gov](http://www.calpers.ca.gov).
- **State agency certification and resolution:** State agencies must obtain approval from CalHR via the Personnel Management Liaisons (PML) Memorandum titled Retired Annuitants Hiring Exception Procedure, Reference No. 2013-001. CalHR submits the approval to CalPERS prior to the retiree's hire date.
- **California State Universities (CSU) FERP exception:** The retiree may participate, if eligible, in the Faculty Early Retirement Program (FERP) pursuant to a collective bargaining agreement that existed prior to January 1, 2013, or has been included in subsequent agreements.

# EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES

## Effective January 1, 2013

### Disqualification for an Exception to the 180-day wait period:

- If a retiree accepts a Golden Handshake or any other employer incentive related to retirement, he or she must serve the 180-day wait period regardless of whether he or she would qualify for any of the exceptions above.

### **POST-RETIREMENT EMPLOYMENT RETIRED ANNUITANT REQUIREMENTS:**

#### **GC SECTION 7522.56:**

- **Limited Duration Work & Retiree Skills:**

A CalPERS retiree can be appointed by the appointing power of the employer without reinstatement or loss of retirement benefits either during an emergency to prevent stoppage of public business or because the retiree has skills needed to perform work of limited duration. Since emergencies, e.g., disasters such as floods or earthquakes, etc., that would cause actual stoppage of public business are rare, these appointments are generally those requiring skills needed to perform work of limited duration. There should be some showing in the retiree's work history that he or she has previous experience and the skill set needed to perform the desired work.

- Is this a limited duration position, e.g., extra help work such as elimination of a backlog, work on a special project, or work in excess of what your permanent or regular staff employees can do and, it is not a permanent or regular staff position?
  - Retiree Skills: Is there some showing in the retiree's work history that he or she has previous experience and the skill set needed to perform the required work?
- **960 Hour Limit per Fiscal Year:**
    - A retiree is limited to working a maximum of 960 hours per fiscal year for all CalPERS employers. There is no exception to this limit. Retirees can be employed for more than one fiscal year as long as the employment continues to meet all of the requirements otherwise.
    - CSU academic retirees are limited to 960 hours per fiscal year or 50% of the hours employed during the last fiscal year of service prior to retirement, whichever is less. There is no exception to this limit.

## **EMPLOYER CHECKLIST FOR HIRING CaPERS RETIREES** **Effective January 1, 2013**

- **Rate of Pay Requirement:**
  - The compensation paid to any retiree must be within the monthly rate of pay range, i.e., cannot be less than the minimum nor exceed the maximum monthly base salary, paid to other employees performing comparable duties, divided by 173.333 hours to equal an hourly rate.
  - No other benefit, incentive, compensation in lieu of benefits, or other form of compensation can be paid in addition to this hourly pay rate.
  
- **Enrollment in the my|CaPERS system:**
  - For public agency and school employers, the retiree must be enrolled as a retired annuitant and payrate with hours worked reported in the my|CaPERS system. No retirement contributions are reported by the employer or member for retired annuitants. For state agencies and CSU employers, the retiree must be enrolled as a retired annuitant in PIMS.

### **GC SECTION 21221(h) POSITIONS – SPECIFIC REQUIREMENTS:**

This section applies to public agency and school employers. The governing body for a school district is its county office of education.

#### **Limited Duration Work & Retiree Skills:**

- **Single interim appointment to a vacant position:** The governing body of a public agency or the county office of education of a school employer can appoint a retiree to work in a vacant position during the recruitment to permanently fill the vacancy or during an emergency to prevent stoppage of public business. This section is used to hire retirees on an interim basis to vacant managerial, executive or other unique positions, such as city manager, CIO, CFO, police chief, director, department heads, etc. Since emergencies that would cause the actual stoppage of public business, e.g., disasters such as floods or earthquakes, etc., are rare, these appointments are generally to provide a retiree with the needed skill set to work in the unique position during the recruitment to permanently fill the vacancy. The governing body's appointment should explain the need for the particular retiree's hire and there must be documentation that the governing body made the appointment in the form of a resolution, board minutes, etc.

There must be an open recruitment to permanently fill the position in place to hire a retiree. The retiree can be appointed only once to this position, thus, the employment agreement, contract, or appointment document must specify the end date of the appointment. There should be a showing in the retiree's work history that he or she has the previous experience and the skill set to perform the work of the position.

## **EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES**

### **Effective January 1, 2013**

- Is this an interim appointment, i.e., the retiree is not being hired as the permanent employee?
  - There must be an open recruitment to permanently fill the vacant position before the retiree is appointed. Is there an open recruitment to permanently fill the vacant position?
  - The retiree can be appointed only once to this position. Does the employment agreement, contract, or appointment document, etc., specify the end date for the appointment?
  - Is there some showing in the retiree's work history that he or she has previous experience and the skill set needed to perform the work required?
  - Was this appointment made and duly documented by this employer's governing body?
- **960 Hour Limit per Fiscal Year:**
    - The retiree is limited to working a maximum of 960 hours per fiscal year for all CalPERS employers. There is no exception to this limit.
- **Rate of Pay Requirement:**
    - The rate of pay range for GC section 21221(h) appointments is the monthly rate of pay range for the vacant position. The compensation paid to the retiree must be within the monthly rate of pay range, i.e., cannot be less than the minimum nor exceed the maximum monthly base salary, divided by 173.333 hours to equal an hourly rate.
    - No other benefit, incentive, compensation in lieu of benefits, or other form of compensation can be paid in addition to this hourly pay rate.
- **Enrollment in the my|CalPERS system:**
    - The retiree must be enrolled as a retired annuitant and payrate with hours worked reported in the my|CalPERS system. No retirement contributions are reported by the employer or member for retired annuitants.

# **EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES**

## **Effective January 1, 2013**

### **SERVICE AFTER RETIREMENT ON STATE BOARDS AND COMMISSIONS:**

GC section 7522.57 provides the following conditions and limitations for service on any salaried state board or state commission by a retiree receiving a pension from a public retirement system who is first appointed on or after January 1, 2013:

**Part-time state board or commission appointment:** A retiree may serve without reinstatement or loss of retirement benefits upon appointment to a part-time state board or commission provided the salary received does not exceed \$60,000 annually. This salary shall be increased in any fiscal year in which a general salary increase is provided for state employees and such increase shall not exceed the general salary increases provided for state employees. The retiree shall acquire no benefits, service credit, or retirement rights with respect to this employment.

### **Full-time state board or commission appointment:**

- A CalPERS retiree may serve on a full-time basis without reinstatement from retirement if he or she serves as a nonsalaried member and shall receive only the per diem authorized to all members of that board or commission. The retiree shall not earn any CalPERS service credit or benefits or make contributions with respect to the service performed. If a CalPERS retiree elects to receive the salary applicable to the board or commission, they must reinstate from retirement.
- A retiree from a public pension system other than CalPERS may serve on a full-time basis by choosing one of the following options:
  - The retiree may serve as a nonsalaried member and continue to receive his or her retirement allowance in addition to any per diem authorized to all members of that board or commission. The retiree shall not earn any CalPERS service credit or benefits or make contributions with respect to the service performed.
  - The retiree may suspend his or her retirement allowance or allowances, if receiving more than one, and enroll as a new member of CalPERS for the service performed on the board or commission. The pensionable compensation earned from this position shall not be eligible for reciprocity with any other retirement system or plan.

# EMPLOYER CHECKLIST FOR HIRING CalPERS RETIREES

## Effective January 1, 2013

### POST-RETIREMENT EMPLOYMENT RESOURCES:

Public Agency & Schools Reference Guide

<http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/er-pubs/manuals/pas-ref-guide.xml>

State Reference Guide

<http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/er-pubs/manuals/state-ref-guide.xml>

Employment after Retirement (Member publication 33)

<http://www.calpers.ca.gov/eip-docs/about/pubs/member/employment-after-retire.pdf>

Reinstatement from Retirement (Member publication 37)

<http://www.calpers.ca.gov/eip-docs/about/pubs/member/reinstatement-retirement.pdf>

CalPERS Benefit Services Division for post-retirement employment questions only:

Email: [BNSD\\_Post\\_Retirement\\_Administration@calpers.ca.gov](mailto:BNSD_Post_Retirement_Administration@calpers.ca.gov)

Fax: (916) 795-0701



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## LEGAL UPDATE

October 11, 2019

**To: Superintendents, Member School Districts (K-12)**

**From: Kaitlyn Schwendeman, Schools Legal Counsel** *KAS*

**Subject: Updated Taxation of Domestic Partner Benefits  
Memo No. 26-2019**

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Our office is reissuing this Legal Update on the taxation of domestic partner benefits, last issued in 2010 as Legal Update 30-2010, with the current legal status, in response to inquiries for updated guidance in this area. If your district has any questions regarding the taxation of these employees, please do not hesitate to reach out to our office for further guidance.

### **Federal Law**

Federal law does not recognize domestic partners as having the same standing as a spouse or qualified dependent when it comes to the taxation of an employee’s benefits. As such, federal law requires that the employer compute the fair market value of domestic partner benefits and include this in the gross income of the employee as compensation, if the employee elects for their eligible domestic partner to receive benefits through an employer-sponsored plan. This income must be reported in the employee’s W-2 and is subject to withholding for income, Social Security and Medicare taxes. In addition, the income is also considered wages for Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA).

**Exception:** A domestic partner may qualify as a “dependent” under Internal Revenue Code (“IRC”) section 105(b). If so, they would be treated as any other qualified dependent and their benefits would not be included in the employee’s gross income. In order for a domestic partner to qualify as a “dependent” under section 105(b), all of the following requirements must be met:

1. Live with the employee for the full taxable year, except for temporary absences such as vacation, military service or education.
2. Is a citizen or legal resident of the United States.
3. Is not a qualifying dependent for anyone else under section 152 of the IRC.
4. Receive more than one half of their support from the employee.<sup>1</sup>

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<sup>1</sup> IRC section 152.



If your plan offers coverage to the child of an employee's domestic partner, the same dependent analysis would apply. If the domestic partner's child cannot meet all of the above criterion, then the fair market value of the benefits for the child must be computed and included as income for the employee.

*Note:* Practically speaking, it is unlikely that a domestic partner's child would qualify under the dependent test, as the child would most likely be considered the dependent of the domestic partner (and thus would fail criteria #3). Therefore, it is likely any benefits extended on behalf of the child would be taxable as wages to the employee.

## **California Law**

California law requires that employers provide the same benefits to employees with registered domestic partners as would be provided to spouses of employees.<sup>2</sup>

California Family Code section 297 defines domestic partners as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring. A registered domestic partnership is created when both persons have filed a Declaration of Domestic Partnership with the Secretary of State, and at the time of filing, all of the following requirements are met:

1. Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
2. The two persons are not related by blood in a way that would prevent them from being married to each other in this State.
3. Both persons are at least 18 years of age.<sup>3</sup>
4. Both persons are capable of consenting to the domestic partnership.

*Note:* As of July 30, 2019, the requirements to form a domestic partnership have been amended. Previously, domestic partnerships in California could only be formed between same sex partners or opposite sex partners where one or both persons were over 62 years of age. These requirements have been repealed.

Employers are not required to verify an employee's claim of a registered domestic partnership. The Fair Employment and Housing Act protects employees from discrimination on the basis of marital status; if employers do not currently have a policy of seeking documentation of marital status from employees, they should not request documentation of domestic partnership status. Similarly, the California Insurance Equity Act provides that insurance carriers can only require documentation of domestic partnership if they also require proof of marriage.

California Revenue and Tax Code section 17021.7 requires that a registered domestic partner of a taxpayer be treated as a spouse or former spouse of that taxpayer for most purposes. This code section extends tax benefits to registered domestic partners and their partner's dependent's health coverage, and excludes coverage amounts from the employee's gross income.

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<sup>2</sup> Employers are not required by law to provide the same benefits to unregistered domestic partners, though some districts extend such benefits by policy or regulation.

<sup>3</sup> There is an exception within the law for domestic partners under the age of 18, if both partners obtain the consent of their parents and a court order granting permission, as well as meet other requirements, set forth in the law. Family Code section 297.1.



## **Conclusion**

In light of the above, qualified domestic partner benefit coverage amounts shall be excluded from California taxation if the employee meets the domestic partnership test and is registered with the State. In that case, the fair market value of the domestic partner's benefits shall only be classified as income for federal tax purposes (except in the rare circumstance where the domestic partner qualifies as a dependent under IRC section 104(b)). However, if the employee does not meet California eligibility, the benefits shall be considered income for both state and federal tax purposes.

## **Fair Market Value of Benefits**

If it is determined that the domestic partner's benefits must be classified as taxable income to the employee, the employer must determine the fair market value of the benefits. The IRS does not provide any official guidance on how to determine the fair market value, however, there are two generally accepted methods:

- **Tiered Rates**: The difference between the amount the employer would contribute for the employee alone and the amount the employer would contribute for coverage of an employee and a spouse and/or dependents (as applicable).
- **Composite Rates**: If the employer pays a composite rate for employees, it must use the computed fair market value percentage formulas as determined by the coverage carrier. The employer will have to contact its carrier for this information.

## **Examples of Tiered Rate:**

- **Employee + 1**: An employee has no children, but does have a registered domestic partner. The medical plan they are enrolled in has an Employee + 1 rate of \$450.00/mo. The Employee Only rate is \$300.00/mo. The difference is \$150.00/mo. Thus, the increase in taxable income to the employee would be \$150.00 per month plus any applicable Social Security and Medicare taxes.
- **Employee + 2 (One Dependent of Domestic Partner)**: An employee has a domestic partner and the domestic partner has one child (who is not a dependent of the employee). The medical plan they are enrolled in has an Employee + 2 rate of \$550.00/mo. The Employee rate is \$300.00. The difference is \$250.00/mo. Since the employer must tax the fair market value of both the domestic partner and the child's benefits, the increase in taxable income to the employee would be \$250.00 per month plus any applicable Social Security and Medicare taxes.

Please contact our office with questions regarding this Legal Update or any other matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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