

SUPERCEDED BY HR 2005-34

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
(562) 951-4411

Date: March 26, 2004

Code: TECHNICAL LETTER
HR/Benefits 2004-11

To: Human Resources Directors
Benefits Managers
Payroll Managers

From: Cathy Robinson, Assistant Vice Chancellor
Human Resources Administration



Subject: Post-Retirement Employment for a CalPERS-Covered Employer

The California Public Employees' Retirement System (CalPERS) recently issued Circular Letter 200-143-04, dated February 27, 2004, titled Working After Retirement for a CalPERS-Covered Employer (copy attached). This Circular Letter reminds employers that the CalPERS' Defined Benefit Plan is a tax-qualified pension plan under Section 401(a) of the Internal Revenue Code (IRC), and, as such, it must comply with the requirements of this section to maintain its tax-exempt status. Internal Revenue Service rules do not permit the distribution of benefits to a participant who retires prior to the plan's normal retirement age unless the participant has a "bona fide" separation from service.

Please note that effective January 1, 2004, AB 1584 (Chapter 519, Statutes of 2003) added Government Code Section 21220.5 that states:

"A retired person who has not attained the normal retirement age shall have a bona fide separation in service to the extent required by the Internal Revenue Code, and the regulations promulgated thereunder, before working after retirement pursuant to this article. The board shall establish, by regulations, the criteria under which a bona fide separation is satisfied."

CalPERS will be promulgating regulations within this next year to implement provisions of Government Code 21220.5 which impact persons who retire for service retirement prior to their applicable normal retirement age and return to work for a CalPERS-covered employer. Until CalPERS releases the regulations, CalPERS recommends we interpret the normal retirement age as the age in the Benefit Formula title, e.g., age 55 for the 2% @ 55 formula. In the interim, CalPERS recommends that retiring members and employers comply with federal separation from service requirements:

Distribution:

CSU Presidents
Vice Chancellor, Human Resources
Associate Vice Presidents/Deans of Faculty
Director, SOSS

Federal Law Requirements to Prevent In-Service Distributions:

- Prior to a member's service retirement, there can be no agreement to render service after retirement (either verbal or written) by members who retire before reaching their normal retirement age regardless of the length of the separation.
- A member/retiree who has not reached their normal retirement age must have a separation from service prior to returning to CalPERS-covered employment.

Please contact Human Resources Administration at (562) 951-4411 if you have questions regarding this information. This Technical Letter is also available via Human Resources Administration's Web page at: <http://www.calstate.edu/HRADm/memos.shtml>.

CR/pc

Attachment



California Public Employees' Retirement System
P.O. Box 942704
Sacramento, CA 94229-2704
(888) CalPERS (225-7377)
Telecommunication Device for the Deaf
No Voice (916) 326-3240
www.CalPERS.ca.gov

Date: **February 27, 2004**

Reference No:

Circular Letter No: **200-143-04**
Distribution: **IV, V, VI, X, XII,
XVI, XIX**

Special:

TO: ALL STATE AGENCIES, PUBLIC AGENCIES, EMPLOYEE REPRESENTATIVES, AGRICULTURAL DISTRICTS, STATE COLLEGES & UNIVERSITIES, COUNTY SUPERINTENDENTS OF SCHOOLS, AND INDIVIDUAL SCHOOL DISTRICTS

SUBJECT: WORKING AFTER RETIREMENT FOR A CALPERS-COVERED EMPLOYER

The California Public Employees' Retirement System (CalPERS) Defined Benefit Plan is a tax-qualified pension plan under Section 401(a) of the Internal Revenue Code (IRC) and, as such, it must comply with the requirements of this section to maintain its tax-exempt status. Internal Revenue Service rules do not permit the distribution of benefits to a participant who retires prior to the plan's normal retirement age unless the participant has a "bona fide" separation from service.

Chapter 519, Statutes of 2003 (AB1584) added Government Code Section 21220.5 effective January 1, 2004. This section states:

"A retired person who has not attained the normal retirement age shall have a bona fide separation in service to the extent required by the Internal Revenue Code, and the regulations promulgated thereunder, before working after retirement pursuant to this article. The board shall establish, by regulations, the criteria under which a bona fide separation is satisfied."

CalPERS will be promulgating regulations within the next year to implement Government Code Section 21220.5 which impacts persons who retire for service retirement prior to their applicable normal retirement age and return to work for a CalPERS covered employer. In the meantime, it is recommended that retiring members and employers comply with federal separation from service requirements:

Federal Law Requirements to Prevent In-Service Distributions:

- Prior to a member's service retirement, there can be no agreement to render service after retirement (either verbal or written) by members who retire before reaching their normal retirement age regardless of the length of the separation.

- A member/retiree who has not reached their normal retirement age must have a separation from service prior to returning to CalPERS-covered employment.

Until CalPERS has promulgated regulations, we recommend you use the normal retirement age as stated in the contracts between the employer and CalPERS or if no contract is available, the age in the Benefit Formula title. For example, age 55 for the 2%@55 formula.

If you have any questions, please contact the Employer Contact Center at (888) CalPERS (225-7377).

Kenneth W. Marzion, Division Chief
Actuarial & Employer Services Division