

SUPERCEDED BY HR 2008-23

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Date: January 11, 2006

Code: HR 2006-02

To: CSU Presidents

Reference: HR/Benefits 2004-30

Supersedes: HR 2005-34

From: Jackie R. McClain 
Vice Chancellor
Human Resources

Subject: Post-Retirement Employment: CalPERS' Retirees

The Post-Retirement Employment policy, together with Government Code provisions regarding post-retirement employment of California Public Employees' Retirement System (CalPERS) retirees, is being reissued due to a recent change in the law governing post-retirement employment. Government Code provisions permit former CSU academic, staff, and management employees who retire and receive CalPERS retirement benefits to accept limited CSU employment without jeopardizing retirement benefits or requiring reinstatement from retirement. In Attachment A, we have listed relevant Government Codes and provided summaries of CalPERS post-retirement employment provisions.

New Law

Effective January 1, 2006, the Legislature changed the law (Statutes of 2005, Chapter 328, Assembly Bill 1166) resulting in the elimination of the calendar year option for the employment of rehired annuitants. Under Government Code 21224, employment of a rehired annuitant is now designated on a fiscal year basis for a maximum of 960 hours.

Because this change occurred midway through the fiscal year, CalPERS is permitting rehired annuitants who were designated in 2005 as working on a calendar year basis under Government Code 21224 to work up to a maximum of 960 hours from January 1, 2006 through June 30, 2006 in this fiscal year. Beginning July 1, 2006 through June 30, 2007, and all future fiscal years, the maximum hours a retiree may work is 960 hours in a fiscal year.

No other substantive changes pertaining to post-retirement employment were made.

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The CalPERS Circular Letter detailing the above change may be found at <http://www.calpers.ca.gov/eip-docs/employer/cir-ltrs/200-265-05.pdf>

Please note the following:

Academic Positions

Government Code section 21227 permits a retiree to be appointed as a rehired annuitant to an academic position, but the employment may not exceed 960 hours or 50 percent of the hours the member was employed during the last fiscal year prior to retirement, **whichever is less**. CalPERS recently confirmed the “*whichever is less*” limit. The hourly restriction is accumulative for all CalPERS’ covered employers. CSU is to use this Government Code section for Faculty Early Retirement Program (FERP) participants and other annuitants rehired to fulfill academic program requirements. Please note that the FERP article in the CSU-CFA Collective Bargaining Agreement (CBA) is more restrictive and limits FERP employment to 90 days or 50 percent of the employee’s regular time base in the year preceding retirement.

Staff and Management Positions

Under certain circumstances, retirees may be appointed as rehired annuitants to staff or management positions but are restricted to working 960 hours for all CalPERS-covered employers in **a fiscal year**. Annuitants may be rehired during an emergency to prevent stoppage of public business or because the retiree has skills needed in performing specialized work of limited duration. Both the campus and the rehired annuitant are responsible for tracking hours of employment.

Calculating Employment Limits

To calculate employment limits under the relevant Government Code sections, different methods are used for academic and staff and management appointments:

- **For FERP academic appointments:** The applicable campus academic calendar defines workdays for this purpose. If a retired faculty member is hired for an academic term, all the academic workdays (prorated by time base) defined by the academic calendar count toward the FERP 90 day (720 hour full time equivalent) or 50 percent methodology maximum (time base maximum) regardless of actual days spent teaching. This is true whether the faculty member is working full or part-time during the term.

- **For Non-FERP academic appointments:** The applicable campus academic calendar defines workdays for this purpose. If a retired faculty member is hired for an academic term, all the academic workdays (prorated by time base) defined by the academic calendar count toward the 960 hour (the equivalent of 120 academic workdays) or 50 percent of the hours methodology maximum (time base maximum) **whichever is less**, regardless of actual days spent teaching. This is true whether the faculty member is working full or part-time during the term.

- **For non-exempt and exempt staff and management appointments:**
Each day or partial day the retiree works is calculated on an hour-for-hour basis toward the 960 hour maximum. For example, a retiree appointed to work an eight (8) hour Monday-Wednesday-Friday schedule would charge 24 hours per week against the 960 hour maximum.

Employment Provisions

Rehired annuitants are considered retirees and receive their CalPERS retirement benefits in addition to compensation for limited CSU work permitted under statute. Post retirement CSU compensation is subject to federal, state, and Medicare taxation. Law excludes CSU compensation from Social Security taxation for rehired annuitants receiving retirement benefits through CalPERS.

If eligible for CalPERS retiree medical and CSU basic retiree dental benefits, retirees continue to receive these benefits while working as rehired annuitants. A specific benefits program is negotiated for FERP participants. For additional information on FERP provisions, please refer to HR/Benefits 2004-08.

Please note: Retirees who participated in the 1992 Early Retirement Incentive Program for faculty are no longer excluded from working for the CSU under the provisions listed above.

Penalties for Exceeding Restrictions

If a rehired annuitant works in excess of the restriction allowed under the applicable Government Code, the rehired annuitant is subject to reinstatement to employment retroactive to when the employment began and must reimburse CalPERS for all retirement allowances received during the unlawful employment. Both the rehired annuitant and campus also are subject to payment of retirement contributions for the wages earned during the period of employment.

Additional CalPERS Post-Retirement Employment Restrictions

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 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. Until CalPERS created regulations to govern these requirements, HR/Benefits 2004-11 advised campuses to interpret the normal retirement age as the age in the CalPERS Benefit Formula title, e.g., age 55 for the 2% @ 55 formula, and to comply with federal separation from service requirements.

CalPERS Circular Letter 200-181-04, dated September 3, 2004, titled *Employment after Retirement With A CalPERS-Covered Employer* (Attachment B) provides the final regulations covering what constitutes "Normal Retirement Age" and "Bona Fide Separation in Service." A summary of the regulations follows:

- **Normal Retirement Age** – The normal retirement age is the member's benefit formula age. For example: The normal retirement age for a member with the 2% at 55 benefit formula would be age 55.

- **No Pre-Determined Agreement With Employer** – For members who retire before reaching normal retirement age, there can be no agreement (either verbal or written) prior to retirement to render service to **any** CalPERS-covered employer as a retired annuitant regardless of the length of the separation.
- **Bona Fide Separation in Service** – A retired member who is under normal retirement age must have a minimum separation in service of 60 calendar days prior to returning to any CalPERS-covered employment without reinstatement.
- **Emergency Hiring Exceptions** – Allows for immediate employment of a retired member under normal retirement age for emergency situations as defined by Government Code section 8558.

Campuses are to exclude from hire retirees who have collected unemployment insurance compensation during the 12-month period prior to an appointment eligible under Government Code 21224 if the retiree received any unemployment insurance compensation arising out of prior employment subject to this GC section with the same employer. Furthermore, a retiree who accepts an appointment after receiving unemployment insurance compensation pursuant to this provision, must terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retiree shall not be subject to Section 21202 of subdivision (b) of Section 21220 (reinstatement provisions.) Please refer to Technical Letter HR/Benefits 2004-30 for additional information.

Please note: the California Public Employees' Retirement Law (PERL) governs the California Public Employees' Retirement System. The above statements are general; the PERL is complex and subject to change. If there is a conflict between the law and statements in this memorandum, any decision will be based on the law as interpreted by CalPERS.

If you have faculty-related questions, please contact Cordelia Ontiveros at (562) 951-4503. Questions related to staff or management should be addressed to Pamela Chapin at (562) 951-4414. This memorandum is also available on Human Resources Administration's Web page at: <http://www.calstate.edu/HRAdm/memos.shtml>

JRM/pc
Attachments

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HR 2006-02
ATTACHMENT A

GOVERNMENT CODE (GC) RESTRICTIONS AND PENALTIES CalPERS Post-Retirement Employment

The following is a summary of statutes that outlines terms in which an annuitant may return to limited CSU employment without reinstatement or penalty:

- GC Section 21223 - allows post-retirement employment under certain conditions where the retiree's knowledge or presence is required by his/her former employer for anticipated litigation or legal proceedings or a proceeding before the State Board of Control. CalPERS' offset provisions will apply.
- GC Section 21224 - allows a retiree to work up to 960 hours in any **fiscal year** for all CalPERS' employers. Such employment is allowable to prevent stoppage of public business or because the retiree has skills that are needed for specialized work of limited duration. Prohibits employment of a retiree who received unemployment insurance compensation during the 12-month period prior to an appointment eligible under GC 21224 as a result of previous employment under this section. (See also GC 21229.)
- GC Section 21227- allows a retiree to work as a member of the CSU academic staff, where employment does not exceed, in any fiscal year, 960 hours for all employers or 50 percent of the hours the member was employed during the last fiscal year prior to retirement, **whichever is less**. (This is the section of the Government Code that covers Faculty Early Retirement Program participants.)
- GC Section 21228 –allows an individual, who retired for disability (subject to CalPERS' approval), to work in a position other than that from which he/she retired or a position in the same member classification. CalPERS' offset provisions will apply.
- GC Section 21229 - allows a retiree to work up to 960 hours in any fiscal year for all CalPERS' employers. Such employment is allowable to prevent stoppage of public business or because the retiree has skills that are needed for specialized work of limited duration. (See also GC 21224.)

If post-retirement employment limits are exceeded, the CalPERS' retiree and CSU are subject to penalties as outlined in the following summaries of pertinent Government Code sections:

Retiree will be required:

- To be reinstated to (CalPERS) membership in the category in which, and on the date which, the unlawful employment occurred (GC 21202).

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- To reimburse the retirement system for any retirement allowance received during any period of employment, which is in violation of law (GC 21220).
- To pay to the retirement system an amount of money equal to the employee contributions that would otherwise have been paid during any period of unlawful employment, plus interest (GC 21220).
- To contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to this situation, as determined by the executive officer (GC 21220).

CSU will be required:

- To pay to the retirement system an amount equal to the employer contributions which would otherwise have been paid during any unlawful period of employment, plus interest (GC 21220).
- To contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to this situation, as determined by the executive officer (GC 21220).

Please note: The California Public Employees' Retirement System is governed by the California Public Employees' Retirement Law (PERL). The above summaries are general; the PERL is complex and subject to change. If there is a conflict between the law and the above summaries, any decision will be based on the law and not the above summaries.



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Special:

Circular Letter

TO: **ALL STATE AGENCIES, CONTRACTING EMPLOYERS, CALPERS-AFFILIATED EMPLOYEE AND RETIREE ASSOCIATIONS, AGRICULTURAL DISTRICTS, STATE COLLEGES & UNIVERSITIES, COUNTY SUPERINTENDENTS OF SCHOOLS, AND INDIVIDUAL SCHOOL DISTRICTS**

SUBJECT: **EMPLOYMENT AFTER RETIREMENT WITH A CALPERS-COVERED EMPLOYER**

This Circular Letter is to inform you that the "Normal Retirement Age" and "Bona Fide Separation in Service" regulations have been finalized and are effective September 19, 2004 (see attached).

In a previous Circular Letter (#200-143-04), you were informed that if a participant has not attained their normal retirement age, they must have a bona fide separation in service prior to returning to employment as a retired annuitant. The bona fide separation in service is a federal requirement which prohibits in-service distributions from a pension plan.

The final regulations specify that a California Public Employees' Retirement System (CalPERS) member who has **not** reached normal retirement age must have a 60 calendar-day separation in service prior to returning to employment as a retired annuitant, **and** there must be no agreement (either verbal or written) to return to employment between the member and a CalPERS employer prior to retirement.

Background:

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 (IRS) rules do not permit the distribution of benefits to a retiree who returns to employment as a retired annuitant prior to attaining the plan's normal retirement age unless the retiree had a "bona fide" separation in service. A retiree may reinstate to active service at any time.

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 regulation, the criteria under which a bona fide separation is satisfied.

CalPERS promulgated regulations under Title 2, sections 586 – 586.2, in order to implement Government Code section 21220.5 and comply with federal requirements.

Summary of Regulations:

Normal Retirement Age – The normal retirement age is the member's benefit formula age. For example: The normal retirement age for a member with the 2% at 55 benefit formula would be age 55. The normal retirement age for a member with the 2% at 60 benefit formula would be age 60.

No Pre-Determined Agreement With Employer – For members who retire before reaching normal retirement age, there can be no agreement (either verbal or written) prior to retirement to render service to **any** CalPERS covered employer as a retired annuitant regardless of the length of the separation.

Bona Fide Separation in Service – A retired member who is under normal retirement age must have a minimum separation in service of 60 calendar-days prior to returning to any CalPERS-covered employment without reinstatement.

Emergency Hiring Exceptions – Allows for immediate employment of a retired member under normal retirement age for emergency situations as defined by Government Code section 8558.

Questions and Answers:

Question #1: *When are the regulations effective?*

Answer: The regulations are effective September 19, 2004.

Question #2: *Who is impacted by the new regulations?*

Answer: Employers and any CalPERS active member or retired member who has not reached normal retirement age.

Question #3: *What is the normal retirement age?*

Answer: The normal retirement age is the member's benefit formula age. For example: The normal retirement age for a miscellaneous member with the 2% at 55 benefit formula would be age 55. The normal retirement age for a member with the 2% at 60 benefit formula would be age 60.

Question #4: *What normal retirement age will be used if the member retires under more than one benefit formula ?*

Answer: The highest specified age applicable to the member is used. For example: If the member's retirement benefit was calculated based on two different retirement formulas, the 2% at 55 as a miscellaneous member and the 3% at 50 as a safety member, age 55 would be the normal retirement age since it is the highest age.

Question #5: *A member retires with a 2% at 55 benefit formula at age 56. Then, within 60 days, the member is offered employment with a different CalPERS covered employer with a 2% at 60 benefit formula. Does this member have to wait at least 60 days to re-employ at the new agency?*

Answer: No. The normal retirement age for the employment from which the member retires will apply. In this example, the member would not need to have a separation in service because the age at retirement (56) is older than the normal retirement age (55). On the other hand, if a 2% at 55 benefit formula applies and the member retires at age 50, at least a 60 day separation is required before returning to employment as a retired

annuitant even if the position is with an employer with a 2% at 50 benefit formula.

Question #6: *How will prospective employers know the normal retirement age of a retired annuitant?*

Answer: Employers will need to ask the job candidate. If a job candidate does not know their normal retirement age, employers should contact CalPERS at (888) CalPERS (225-7377).

Question #7: *Who will enforce the Bona Fide Separation in Service requirement?*

Answer: It is the employer's responsibility to verify that any person who retired under the CalPERS Defined Benefit Plan prior to attainment of the applicable normal retirement age has a "bona fide separation in service" prior to commencement of service as a retired annuitant. Also, CalPERS auditors will monitor CalPERS covered employers to assure compliance.

Question #8: *What are the consequences to the member and the employer for failing to comply with the bona fide separation in service requirements?*

Answer: The retired annuitant whose employment did not comply with the provisions of Government Code section 21220.5 could be retroactively reinstated to active membership effective the first day of employment as a retired annuitant for the CalPERS-covered employer.

There may be serious financial consequences to both the member and employer. These consequences are described in publication PERS-PUB-37 titled "Reinstatement From Retirement".

Question #9: *Can a member return to employment as an independent contractor without the 60-day separation in service requirement?*

Answer: Hiring a retiree as an independent contractor may be done, but it must be clear that they are not a common law employee (See Circular Letter # 200-154-04). In order to avoid possible mis-classification of the retired annuitant, it is suggested that a copy of the proposed contract or agreement be submitted to CalPERS for review.

Question #10: *Can a member go to work immediately after retirement if they have not reached their normal retirement age?*

Answer: CalPERS retirees can work for the private sector, a 1937 Act County agency, as a teacher or administrator whose retirement is with the California State Teachers' Retirement System or the University of California Retirement Plan or they can work for a public agency not covered by CalPERS without the required minimum 60 calendar-day separation in service. They can also work for any CalPERS-covered employer if they reinstate.

Question #11: *If California legislation eliminated the 960-hour limitation on retired annuitants, would a bona fide separation in service still be required?*

Answer: Yes. The bona fide separation in service requirement would still apply to retirees who have not reached their normal retirement age.

Question #12: *Can an employer and an employee who is under the normal retirement age have an agreement for the employee to return to employment as a retired annuitant?*

Answer: No. The IRS has considered a bona fide separation to be a good faith and complete termination of the employment relationship, without a predetermined agreement to continue working at a later date, to constitute a bona fide separation. If there was a side agreement or meeting of the minds that the member would render services to the employer in the future, the IRS could deem the termination a sham and find that the member had never severed employment. As such, a distribution to the participant prior to normal retirement age would, upon subsequent assignment, constitute an impermissible in-service distribution.

Question #13: *How can an employer determine if a member under normal retirement age is interested in returning to employment after the 60 calendar-day separation?*

Answer: Surveying employees regarding their interest in working after retirement without making an agreement would be permissible. Also, employers could establish a pool of retirees for future service.

Question #14: *Does the separation in service requirement apply to disability retirements?*

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September 3, 2004

Answer: No. The separation in service requirement applies only to service retirements.

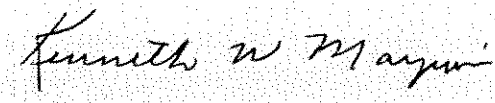
Question #15: *What is included in the definition of emergency?*

Answer: It is the responsibility of federal, state and local agencies to determine what constitutes an emergency. The employment must be related to the emergency. A backlog of work does not qualify as an emergency (Government Code section 8558).

Question #16: *Does the definition of Normal Retirement Age impact the catch-up provision of the CalPERS 457 Program?*

Answer: No. The normal retirement age for employment after retirement does not affect the 457 Plan.

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



Kenneth W. Marzion, Chief
Actuarial & Employer Services Division

Attachment