

# SUPERCEDED BY HR 2005-34

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**Date:** May 26, 2004  
**To:** CSU Presidents  
**From:** Jackie R. McClain   
Vice Chancellor  
Human Resources  
**Code:** HR 2004-16  
**Supersedes:** HR 92-13 and  
HR 92-13, Supplement 1  
**Reference:** Technical Letter  
HR/Benefits 2004-11

**Subject:** Post-Retirement Employment: CalPERS' Retirees

Government Code provisions permit former California State University (CSU) academic and staff/management employees who retire and receive retirement benefits from the California Public Employees' Retirement System (CalPERS) to accept limited CSU employment without jeopardizing retirement benefits or requiring reinstatement from retirement. We have attached updated Government Codes and summaries of post-retirement employment provisions covering CalPERS' retirees who serve as rehired annuitants in CSU academic or staff/management positions.

Please note that the California Government Code was revised and the work restrictions changed from a daily increment of 120 days to the 960 hourly equivalent. As a result, the policy for monitoring staff time is modified to reflect this change and can be found in the staff calculation section of this memorandum.

### Academic Positions

Government Code section 21227 permits that retirees may be appointed as rehired annuitants 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. The hourly restriction is accumulative for all CalPERS' covered employers. This Government Code section is used by CSU 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.

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## **Staff/Management Positions**

Under certain circumstances, retirees may be appointed as rehired annuitants to staff/management positions but are restricted to working 960 hours for all CalPERS' covered employers in either a fiscal year or calendar 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. The campus must designate the work limit on a calendar or fiscal year basis, and once the basis is established for an individual, he/she must retain the same type of year designation unless there is a break in employment sufficient to avoid exceeding the limits under the Government Code sections 21224 or 21229.

## **Calculating Employment Limits**

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

**For FERP academic appointments:** the applicable campus academic calendar defines workdays for this purpose. In other words, 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, 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. In other words, if a retired faculty member is hired for a 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 the member was employed during the last fiscal year of service prior to retirement. This is true whether the faculty member is working full or part-time during the term.

**For non-exempt and exempt staff/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.

Rehired annuitants who meet eligibility requirements may participate in the CalPERS retiree medical and CSU basic retiree dental programs. A specific benefits program is negotiated for FERP participants. FERP participants are eligible to receive enhanced dental benefits and vision coverage over the full term of their FERP participation if appointed at least half-time. A FERP participant also earns sick leave up to the limit specified in the collective bargaining agreement, which is not subject to service credit conversion at the end of the FERP appointment, and may participate in the CSU Fee Waiver and Tax-Sheltered Annuity Programs during the actual period of employment. For additional information on FERP provisions, please refer to HR/Benefits 2004-08.

**Please note:** CSU recently clarified with CalPERS that retirees who participated in the 1992 Early Retirement Incentive Program for faculty are no longer excluded from returning to work 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 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 are also subject to payment of retirement contributions for the wages earned during the period of employment.

### **CalPERS Review of Policy Memorandum**

Please be advised that CSU is in the process of clarifying the following issues with CalPERS:

1. GC 21224 allows a retiree to work up to 960 hours in any **calendar** year for all CalPERS' employers to prevent stoppage of public business or because the retiree has skills that are needed. Current CSU policy permits a CSU retiree to work under this provision. CalPERS recently advised CSU that GC 21224 does not apply to CSU contrary to a prior CalPERS communication that it does apply.
2. GC 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. Recently, CalPERS advised CSU that the retiree is required to select the option that provides the lesser employment.

The CSU is continuing its current policy on the above two issues until they are satisfactorily resolved with CalPERS. Please note, however, that CalPERS is ultimately responsible for interpreting the law as it applies to post-retirement employment. Employees should be advised of the possibility of a change in interpretation that could impact how their employment limitations are calculated. We will advise the campuses, as appropriate.

Please note: The California Public Employees' Retirement System is governed by the California Public Employees' Retirement Law (PERL). The above statements are general; the PERL is complex and subject to change. If there is a conflict between the law and the 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) 951-4425. Questions related to staff 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  
Attachment

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

### **The following is a summary of statutes that outline 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 calendar 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 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. (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).
- To reimburse the retirement system for any retirement allowance received during any period of employment, which is in violation of law (GC 21220).

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- 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.