

EMPLOYMENT OF A RETIREE

Retirees must be enrolled (appointed) as a Retired Annuitant in myCalPERS and their payroll must be reported to CalPERS (Government (Gov.) Code section 20221.5).

Resources for Hiring Retirees

Refer to the following resources for specific employer guidelines:

- [Circular Letter 200-002-14 \(PDF\)](#), Post Service Retirement Employment Requirements
- [Employer Checklist for Hiring CalPERS Retirees \(PDF\)](#)
- [Circular Letter 200-053-16 \(PDF\)](#), Requirements for Working After Disability Retirement for a CalPERS Employer
- [Circular Letter 200-048-18 \(PDF\)](#), Enrolling and Reporting Retired Members
- [Circular Letter 200-054-19 \(PDF\)](#), Assembly Bill 672, Chapter 98 – Working After Disability/Industrial Disability Retirement
- [Circular Letter 200-038-15 \(PDF\)](#), Assembly Bill 1522 Healthy Workplaces, Healthy Families Act of 2014, AB 304 and Retired Annuitants

These resources are available on our [CalPERS website](#).

Resources for Members and Retirees

Advise your retiring employees and retirees to educate themselves before seeking post-retirement employment by reading our member publication, [Employment After Retirement \(PUB 33\) \(PDF\)](#), available on the CalPERS **Forms & Publications** page on the CalPERS website. Or they can call **888 CalPERS** (or 888-225-7377) to request publications by mail.

Government Codes (Gov. Code)

California retirement law and federal tax law provide specific restrictions for employment after retirement. Gov. Code sections 7522.56, 7522.57, 21202, 21220, 21220.5, 21221(h),

21224, 21227, 21229, 21231, 21232, and 21233 provide the requirements for employment of a CalPERS retiree. Gov. Code section 7522.56 provides that a retired person shall not serve, be employed by, or be employed through a contract directly by a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement (i.e., termination of the retirement) except as permitted by this section.

Retired Annuitant is our general term for a CalPERS retiree employed by a CalPERS employer under the authority of Gov. Code sections 7522.56, 21221(h), 21224, 21227, and 21229.

Civil Service Eligibility Requirement for Retired Annuitant Employment and Employment under Gov. Code section 21232

CalPERS service retirees can only be lawfully employed in retired annuitant compliant positions. CalPERS disability retirees can be lawfully employed in retired annuitant positions or upon CalPERS written pre-approval be employed in permanent positions with certain restrictions.

A CalPERS retired state civil service employee may be appointed as a retired annuitant to a position that is either (a) in the class the person had permanent or probationary status or a Career Executive Assignment appointment at the time of retirement or (b) in another class the person could have been permanently transferred, reinstated, or demoted at the time of retirement.

A CalPERS retiree who is not retired from state civil service (i.e., retired from a CalPERS public agency or school employer or a retired state employee exempt from civil service) can only be appointed as a retired annuitant if they are either:

- (a) Qualified for the appointment under other civil service provisions such as emergency appointment, temporary authorization (TAU) appointment
- (b) Eligible for the position on a civil service employment list

For more information on the civil service process, refer to the [CalHR Online Human Resources Manual](#) (section 1200 – Appointments) available on the [California Department of Human Resources \(CalHR\)](#) website.

Termination of Retirement Due to Unlawful Employment

Employers and retirees have equal responsibility to ensure any post-retirement employment is lawful. CalPERS service retirees can only be lawfully employed in retired annuitant compliant positions. CalPERS disability retirees can be lawfully employed in retired annuitant positions or upon a CalPERS written pre-approval, be employed in permanent positions with certain restrictions.

Employment that violates any of the retired annuitant requirements or Gov. Code sections 21232 and 21233 requirements for disability/industrial disability retirees is unlawful employment. Unlawful employment results in reinstatement from retirement for the retiree, i.e., termination of the retiree's monthly retirement allowance and any other post-retirement benefit.

When reinstated for unlawful employment, the retiree is required to reimburse CalPERS for any retirement allowance received during the period of unlawful employment. Upon enrollment into active membership, the employee will pay member contributions plus interest to the employer for the period of unlawful employment. The employer will pay retroactive employer contributions plus interest and submit the member contributions, thereby crediting the employee with service credit for the period of unlawful employment.

Screen for Retirees When Hiring

When interviewing potential employees, the employer should ensure they lawfully hire CalPERS retirees with the following actions:

- Ask if the candidate is a CalPERS retiree and if so, to specify the type of retirement: service, disability, or industrial disability.
- If the candidate is a CalPERS service retiree and the position is not a retired annuitant position, inform the candidate that reinstatement from retirement (i.e., termination of CalPERS retirement and

enrollment as an active employee) is required to be hired into the position. Refer to the publication [Reinstatement from Retirement \(PUB 37\) \(PDF\)](#) for the voluntary reinstatement process.

- If the candidate is a CalPERS disability/industrial disability retiree and the position is a retired annuitant position, ensure the job duties differ significantly from those required under the position from which the candidate retired. The position should not include duties or activities the candidate was previously restricted from performing at the time of their retirement. If the position is not a retired annuitant position, inform the candidate that a CalPERS written pre-approval must be obtained before being hired. Refer to the *Employment of a Disability/Industrial Disability Retiree* section in this guide for more information.

Retiree Wait Periods

To be eligible for employment as a retired annuitant, all retirees (both service and disability/industrial disability) must meet the following requirements to work for a CalPERS employer:

- A. The 60-calendar day bona fide separation in service requirement, if younger than normal retirement age on retirement date
- B. The 180-day wait period requirement or an allowable exception

These requirements are further explained below.

For exceptions for CalSTRS covered positions or positions in any other public retirement system, refer to the *Employment in Other Public Retirement Systems* section in this guide.

Bona Fide Separation in Service Requirement

The bona fide separation in service is required of CalPERS by Internal Revenue Code tax regulations to maintain our federal tax-qualified status. The only exception to the 60-calendar day separation is when a declared emergency as provided in Gov. Code section 8558 requires the employment of the retiree (California Code of Regulations (CCR) sections 586-586.2 and Gov. Code section 21220.5).

When the retiree is under normal retirement age on the retirement date, employment cannot begin, even if an exception to the 180-day wait period applies, unless both of the following conditions are met:

- There was no verbal or written agreement to return to work, either as a retired annuitant or in a position under Gov. Code section 21232, between the member and the employer before the member retired.
- There is a termination of employment (separation in service) for 60-calendar days between the retirement date and the date the retiree's employment will begin.

Normal retirement age is the age named in the member's retirement benefit formulas. For example, the normal retirement age for a 2% at 55 retirement benefit formula is 55. If the member has more than one retirement benefit formula, then the normal retirement age is the maximum normal retirement age up to age 62. This applies even if the service in that formula was with a previous CalPERS employer and/or several years prior. Members can view their retirement formulas on their myCalPERS account under Service Credit History located in the **Retirement Summary** section and on their most current Annual Member Statement.

Example 1: Joe Smith is a local miscellaneous member who retired June 30, 2012, at age 52. His retirement benefit formula is 2% at 55. Because he has not reached his normal retirement age of 55, he must have a bona fide separation in service.

Example 2: Joe Smith is a current local miscellaneous member. His two retirement benefit formulas are 2% at 60 and 2% at 55. The normal retirement age for Joe is the maximum normal retirement age of 60, not 55. If Joe retires prior to age 60, he must have a bona fide separation in service.

If the retiree has reached their normal retirement age, the bona fide separation is not required. The normal retirement age is displayed in myCalPERS for employers and in the member's myCalPERS account.

180-Day Wait Period Requirement

All employees whose post-retirement employment begins January 1, 2013, or later must serve a 180-day wait period between their **retirement date** and their first day of post-retirement employment. Certain exceptions to this wait period are identified as follows:

NOTE:

None of the following exceptions apply if the retiree receives a Golden Handshake or any other retirement incentive (Gov. Code section 7522.56(g)).

180-Day Wait Period Exceptions

The exceptions to the 180-day wait period are:

- **Firefighter or Public Safety Officer:** The person retired as a firefighter or public safety officer as defined in Gov. Code section 3301 (peace officer) and they will perform firefighter or public safety officer retired annuitant work (Gov. Code section 7522.56 (f)(4) and CCR section 579.25).
- **Employer Resolution Certification:** The governing body of a public agency or for school employers, the governing body of either the district or the County Office of Education must present CalPERS with a resolution, passed in a public meeting, that approves the appointment. The employer resolution certifies in writing the nature of the employment and the appointment is necessary to fill a critically needed position before 180 days has passed. This resolution may not be placed on a consent calendar.

Sample 180-Day Exception Resolutions:

To secure a 180-day wait period exception, the employer must submit the resolution certification package (refer to submission instructions and links to sample resolutions below), and a copy of the retiree's employment agreement or personnel appointment document to CalPERS **before** the first day of employment.

- [180-Day Wait Period Exception Sample Resolution Public Agencies \(PDF\)](#)
- [180-Day Wait Period Exception Sample Resolution Schools \(PDF\)](#)

For service retirees, submit documents by one of the following:

Fax: (916) 795-4166

Email:

Working_After_Retirement@calpers.ca.gov

Mail:

CalPERS

c/o Membership & Post-Retirement Employment Determinations Team

Employer Account Management Division

PO Box 942709

Sacramento, CA 94229-2709

Service Retirement vs. Disability/Industrial Disability Retirement

Service Retirement

A CalPERS service retiree may work for a CalPERS employer, i.e., an employer who contracts with CalPERS, for retirement benefits or state agencies, in a retired annuitant position. If a retiree is appointed to a permanent regular staff position, regardless of whether part time or full time, they are unlawfully employed and subject to termination of retirement, i.e., reinstatement from retirement. Refer to the *Termination of Retirement Due to Unlawful Employment* section in this guide for more information.

Disability/Industrial Disability Retirement

A CalPERS disability/industrial disability retiree may work for a CalPERS employer, i.e., an employer who contracts with CalPERS for retirement benefits or state agencies, in a retired annuitant position or in a permanent position with certain restrictions. A retired annuitant position does not require a CalPERS written pre-approval. However, disability retirees cannot be employed in the same position from which they retired or in a position which includes duties or activities they were restricted from performing at the time of their disability retirement.

A CalPERS written pre-approval is required for working in a permanent position (full time or part time) for a CalPERS employer. Refer to the *Employment of a Disability/Industrial Disability Retiree* section in this guide for more information.

Retired Annuitant Employment Requirements for All Retirees

For all retirees, a CalPERS written pre-approval is not required for appointment to retired annuitant positions. There are two types of retired annuitant appointments for public agency and school employers: extra help and vacant position. The retired annuitant employment requirements are the same for both, and there are additional requirements for the vacant position appointment.

- **Limited Duration Work:** The retiree has the skills needed to perform work of limited duration or the employment is needed during an emergency to prevent stoppage of public business.
- **Extra Help Positions Only:** Retirees must be employed in a designated retired annuitant extra help position. This would include seasonal, permanent intermittent, exempt from membership, TAU, or any other temporary position even if it is on an interim basis.
- **960-Hour Fiscal Year Limit:** A retired annuitant can work no more than 960 hours in a fiscal year (July 1 – June 30), for employment with all CalPERS employers combined. There is no exception to this limit. The retiree and employer have equal responsibility to track the hours worked.
 - A CSU academic retiree may be employed in any fiscal year as a member of the CSU academic staff in a retired annuitant position not to exceed 960 hours for all employers or 50% of the hours the member was employed during the last fiscal year of service prior to retirement whichever is less (Gov. Code sections 7522.56 and 21227).
- **Pay Rate Only Compensation:** The retired annuitant position cannot be less than the minimum or exceed the maximum monthly base salary paid to other employees performing comparable duties listed on the employer's publicly available pay schedule. To derive the hourly rate, divide the monthly salary by 173.333.
- **No Benefits/Other Compensation:** The retiree cannot receive any benefit, incentive,

compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. Overtime pay is allowed as is required by the Federal Fair Labor Standards Act. Additional compensation such as, but not limited to, sick leave, holiday pay, shift differential pay, and education incentive pay is not allowed. The retiree can only receive the hourly pay rate. **There are no exceptions.**

- **No Retirement Contributions:** No retirement contributions are collected or paid for employed retirees. Only active members pay contributions (Gov. Code sections 7522.56 and 21224).
- **Enrollment:** All retirees hired as retired annuitants must be enrolled in myCalPERS. If an employer fails to enroll a retired member employed at their agency without reinstatement within 30 days of the effective date of hire, a \$200 fee may be assessed per retired member per month until the retired member's appointment is enrolled (Gov. Code section 21220(d)).
 - These fees apply to appointments beginning July 1, 2018, or later. These fees shall not be passed on to the employee.
- **Payroll Reporting:** The hours and pay rate for retired annuitant appointments must be reported in myCalPERS. If an employer fails to report the pay rate and number of hours worked for a retired member employed at their agency without reinstatement, within 30 days of the last day of the pay period in which the retired member worked, a \$200 fee may be assessed per retired member per month until the information is reported. Refer to the *Payroll Reporting, Retired Annuitants* section in this guide for more information (Gov. Code section 21220(e)).
 - These fees apply to appointments beginning July 1, 2018, or later. These fees shall not be passed on to the employee.
- **Vacant Position Appointments:** All retired annuitant requirements also apply to vacant position appointments. A retiree can only be appointed once as an interim employee by the governing body of a contracted public

agency to a vacant position during the recruitment for a permanent replacement. The search for a permanent appointment authorized by the governing body must be active and in place before the retiree is appointed (Gov. Code sections 7522.56 and 21221(h)).

- While not required for retirees who have passed the 180-day wait period, we recommend having a resolution for retirees in vacant position appointments as evidence of compliance with the vacant position restrictions. Refer to the sample resolution:
- [Sample Resolution for Hiring a Retiree in an Interim Appointment \(PDF\)](#)

Unemployment Insurance Benefits and Retired Annuitant Employment

California law prohibits the reappointment of a retired annuitant by a CalPERS employer if, during the 12-month period prior to reappointment, the retiree received unemployment insurance compensation for prior retired annuitant employment with any public employer.

- A retiree shall certify in writing to the employer upon accepting an offer of post-retirement employment that they are in compliance with this requirement.
- Employers may require retirees provide a current Unemployment Insurance Benefit (UIB) printout from the Employment Development Department (EDD) indicating whether they have collected unemployment insurance within the last 12 months to verify compliance.
- The [Authorization for Release of Unemployment Insurance Records for Retired Annuitants \(EDD Form DE 1181\) \(PDF\)](#) can be downloaded from the Employment Development Department (EDD) website at www.edd.ca.gov.

If a currently employed retiree is discovered to have received unemployment insurance compensation based on prior retired annuitant employment, with a CalPERS employer, the current employment must be terminated on the

last day of the current pay period and the retiree shall not be eligible for reappointment by a CalPERS employer for 12 months following the termination of the current employment. A violation of this provision will not result in reinstatement from retirement, i.e., termination of retirement (Gov. Code sections 7522.56(e) and 21224).

Special Appointments – Retired Annuitant Requirements Do Not Apply

- **Elected and Appointed Officers:** As authorized by Gov. Code sections 21231 (previously Gov. Code section 21221(d) and 21222), a CalPERS retiree may serve in an elected or appointed office while retired. However, if all or part of the retiree's retirement allowance is based on service credit in that office, the portion of the retirement allowance based on that service credit is suspended during the retiree's time in office. CalPERS must be informed when an elected or appointed official returns to a position from which they retired. When the retiree leaves the office, their allowance is unsuspended prospectively. Elected and appointed officers authorized by Gov. Code section 21231 do not have to be enrolled into myCalPERS.
- **Full-Time State Board or Commission:** A CalPERS retiree may be appointed to serve on a full-time salaried state board or commission. The retiree may serve without reinstatement from retirement as a non-salaried member and receive only the per diem authorized to all members of the board or commission. If the retiree accepts the salary, the retiree must reinstate from retirement (Gov. Code section 7522.57(c)).
- **Part-Time State Board or Commission:** A CalPERS retiree may be appointed to serve on a part-time state board or commission provided the annual salary is no more than \$60,000. This annual salary shall only be increased in any fiscal year in which a general salary increase is provided to state employees (Gov. Code section 7522.57(b)).
- **Full-Time State Board or Commission, Not a CalPERS Retiree:** A retiree from a public pension system other than CalPERS

appointed to a full-time salaried board or commission shall choose one of the following:

- The retiree may serve without reinstatement from retirement as a non-salaried member and receive only the per diem authorized to all members of the board or commission.
- The retiree may suspend their retirement allowance(s) and reinstate as a new member of CalPERS to serve as a full-time salaried board or commission member. This service shall not be eligible for reciprocity with any other retirement system or plan (Gov. Code section 7522.57(d)).
- **State Board of Parole Hearings:** A retiree from a public employer may serve without reinstatement from retirement upon appointment as a full-time member of the Board of Parole Hearings. This appointment is made by the Governor and requires confirmation from the California Senate (Penal Code section 5075 and Gov. Code section 7522.57(e)).

Independent Contractor Employment – Independent Contractor, Consultant or Third-Party Employee

Before employing a retiree as an independent contractor, consultant, or third-party employee, refer to the *Positions Excluded from CalPERS Coverage, Independent Contractor* section in this guide and note the following:

- "Independent contractors" are **not** employees and are excluded from CalPERS membership by Gov. Code section 20300(b). An independent contractor is someone who contracts to provide a service or complete a task according to their own methods and is not subject to the contracting entity's control as to the end product, final result of work, or manner and means by which the work is performed. CalPERS uses the common law control test as a guide to determine independent contractor status. The common law control test factors are enunciated in the case of *Albert B. Tieberg v. Unemployment Insurance Board* (1970) 2 Cal.3d 943, 949. These factors are also cited in the [CalPERS](#)

[Precedential Decision No. 05-01 \(PDF\)](#), In the Matter of the Application for CalPERS membership credit by Lee Neidengard, Respondent and Tri-Counties Association Regional Center, Respondent. A contract employee (i.e., a common law employee who periodically signs an employment contract) is eligible for CalPERS membership, if otherwise qualified.

- If the retiree will be your employee under common law employment principles (i.e., there is an employer-employee relationship), the employment is subject to the retired annuitant requirements.
- Statutory positions (i.e., positions that are employees by statute) cannot be filled by an independent contractor, consultant, or third-party employee. Examples are city mayor, police chief and fire chief.

Contact CalPERS at **888 CalPERS** (or 888-225-7377) to request the Independent Contractor Checklist package.

If you would like a review of your proposed independent contractor service agreement, email the complete agreement to the [Working After Retirement](#) mailbox.

Employment Through a Third-Party Employer (All Retirees)

Before employing a retiree through a third-party employer, temporary employment agency, or through the retiree's own business entity, refer to the *Positions Excluded from CalPERS Coverage, Independent Contractors* section in this guide and note the following:

- The fact a third-party employer pays the retiree's wages or salary does not exempt the employment from the retired annuitant requirements.
- If the retiree will be your employee under common law employment principles (i.e., there is an employer-employee relationship), the employment is subject to the retired annuitant requirements.
- Statutory positions (i.e., positions that are employees by statute) cannot be filled by employees of a third-party employer. Examples are city mayor, police chief and fire chief.

- Payroll reporting: If a retiree hired through a third-party employer qualifies as a retired annuitant, the retiree must be enrolled as a retired annuitant with CalPERS. You must also obtain the pay rate and hours worked from the third party and report that payroll the same as for your directly employed retired annuitants.

Contact CalPERS at **888 CalPERS** (or 888-225-7377) to request the Independent Contractor Checklist package.

If you would like a review of your proposed independent contractor service agreement, email the complete agreement to the [Working After Retirement](#) mailbox.

Employment in Other Public Retirement Systems

If a retiree is a service retiree, they can be employed in positions that qualify for membership in any other public retirement system without terminating their CalPERS retirement.

If a retiree is a disability retiree, they can work for an employer in a different retirement system and continue to receive their CalPERS retirement allowance with the following restrictions:

- The employment must be in a position significantly different from the one from which the retiree retired. The position should not include duties or activities they were previously restricted from performing at the time of their retirement.
- If a retiree is a disability retiree under the minimum service retirement age, their retirement benefit will be subject to an earnings limit. They are required to report their employment earnings to CalPERS either on a monthly or quarterly basis. The total employer-paid portion of their monthly retirement allowance and new earnings cannot be greater than the current compensation of the position from which they retired. If the total is greater, their retirement allowance will be reduced.
- Contact us at **888 CalPERS** (or 888-225-7377) to request a **Disability Retiree's Report of Earnings** form.

- If a retiree is an industrial disability retiree, their retirement allowance is not subject to an earnings limit, even if they are under the minimum service retirement age.
- If a retiree is under the service retirement age and is determined to be performing duties similar to those from which they were previously found disabled, CalPERS can re-evaluate their medical condition to determine whether they should be reinstated from retirement back into their former position.

A retiree's disability retirement requires them to inform CalPERS immediately if they are no longer incapacitated or if they are currently employed in a position similar to the job they retired from.

Employment in CalSTRS Certificated Positions

Upon clarification by the Department of Finance and the appropriate legislative committee analysts of the legislative intent of PEPR's Gov. Code section 7522.56, Conditions and Limitations on Service After Retirement, CalPERS will no longer interpret this section to prohibit CalPERS retirees from accepting CalSTRS covered certificated positions or positions in any other public retirement system. Given this, no new statute or amendment to Gov. Code section 7522.56 is required to allow for the lawful employment of CalPERS retirees in CalSTRS covered certificated positions or positions in any other public retirement system. The 180-day wait period and bona fide separation requirements do not apply to CalSTRS covered certificated positions or positions in any other public retirement system.

CalPERS retirees cannot elect CalSTRS membership for CalPERS-covered classified positions per Gov. Code section 20309, which only applies to active CalPERS members.

Employment in JRS II or LRS

For information about employment in positions that qualify for membership in the Judges' Retirement System II (JRS II) or the Legislators' Retirement System (LRS), contact the Judges' and Legislators' Retirement Systems at **(916) 795-3688**.

Private Sector Employment After Retirement

If a retiree is a service retiree, they can work for a private industry employer not associated with any CalPERS employer without restrictions and continue to receive their retirement allowance.

If a retiree is a disability retiree, they can work for a private industry employer not associated with any CalPERS employer and continue to receive their CalPERS retirement allowance with the following restrictions:

- The retiree's employment must be in a position significantly different from the one from which they retired. The position should not include duties or activities they were previously restricted from performing at the time of their retirement.
- If a retiree is a disability retiree under the minimum service retirement age, their retirement benefit will be subject to an earnings limit. They are required to report their employment earnings to CalPERS either on a monthly or quarterly basis. The total employer paid portion of their monthly retirement allowance and their new earnings cannot be greater than the current compensation of the position from which they retired. If the total is greater, their retirement allowance will be reduced.
- Contact us at **888 CalPERS** (or **888-225-7377**) to request a **Disability Retiree's Report of Earnings** form.
- If a retiree is an industrial disability retiree, their retirement allowance is not subject to an earnings limit, even if they are under the minimum service retirement age (Gov. Code section 21432).
- If a retiree is under the service retirement age and is determined to be performing duties similar to those from which they were previously found disabled, CalPERS can re-evaluate their medical condition to determine whether they should be reinstated from retirement back into their former position.

A retiree's disability retirement requires the retiree to inform CalPERS immediately if they are no longer incapacitated or if they are currently employed in a position similar to the job they retired from.