

Date: June 9, 2017
Code: HR 2017-04
Supersedes: HR 2008-23
HR 2006-02
Reference: HR/Benefits 2004-30
HR/Benefits 2012-16

To: Human Resources Officers
Benefit Officers
Campus Designees Responsible for Making Decisions Regarding Post Retirement Employment of
CSU Retirees

From: Andrew Jones 
Interim Vice Chancellor
Human Resources

Subject: Post-Retirement Employment: CalPERS' Retirees

Summary

The Post-Retirement Employment policy is being reissued to clarify certain provisions of the Government Code specific to CSU and CSU policy provisions that affect post-retirement employment of individuals with a service retirement from CalPERS. **The Public Employees' Pension Reform Act of 2013 (PEPRA) added sections 7522.56 and 7522.57 to the Government Code effective January 1, 2013, which set forth post-retirement employment requirements applicable to retirees who are employed by CalPERS employers on or after January 1, 2013.**

Government Code provisions permit former CSU academic, staff, and management employees and other CalPERS-covered individuals who retire and receive CalPERS retirement benefits to accept limited CSU employment without jeopardizing retirement benefits or requiring reinstatement from retirement. CSU employees are required to wait 180 days from the retirement date before returning to work as a retired annuitant. Faculty Early Retirement Program (FERP) and Public Safety employees (rehired in a Public Safety position) are exempt from the 180-day wait period. However, for an individual who will be entering FERP at the start of the campus academic year, the 180-day wait period applies to any CSU employment that falls between the date of retirement and the beginning of the FERP assignment. It is important to note that pension reform restricts when faculty who are hired, and become CalPERS members on or after January 15, 2011, may participate in the FERP. Attachment A lists relevant Government Codes and provides summaries of CalPERS post-retirement employment provisions.

Action Item(s):

Campus human resources offices and faculty affairs should review this reissued Post-Retirement Employment policy in its entirety to ensure procedures are in place to ensure compliance with the policy and Government Code provisions.

Affected Employee Group/Unit(s):

Individuals with service retirement from CalPERS who return to work at the CSU (subject to conditions specified in the Government Code).

Distribution:

Chancellor
CSU Presidents
Executive Vice Chancellor and CAO
Executive Vice Chancellor and CFO
Vice Presidents (all campus Vice Presidents)
Payroll Managers

Background/Details:

Academic Positions

Government Code section 21227 permits a retiree to be appointed as a retired annuitant to an academic position; however, the employment may not exceed 960 hours or 50% of the hours the member was employed during the last fiscal year prior to retirement, whichever is less. The hourly restriction is accumulative for all CalPERS' covered employers. Faculty Early Retirement Program (FERP) participants and other annuitants rehired by the CSU to fulfill academic program requirements are subject to this section of the Government Code. Please note that in the CSU California Faculty Association (CFA) Collective Bargaining Agreement (CBA), Article 29, FERP is more restrictive and limits FERP employment to 90 days (720 hours) or 50% of the employee's regular time base in the fiscal year preceding retirement. Please note separate limitations apply to librarians in FERP, who are limited to 50% of the regular time base in the year immediately preceding retirement, not to exceed 960 hours.

Please note: CSU has clarified with CalPERS that for the purpose of determining the hours a member may work post retirement, the member is to use the hours worked in the last fiscal year prior to retirement. For example, if a faculty member is retiring in December 2016, allowable post-retirement employment would be based on the hours employed during fiscal year 2015-16.

Staff and Management Positions

Under certain circumstances, retirees may be appointed as retired 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 after reaching the 180 day wait limit. Both the campus and the retired annuitant are responsible for tracking hours of employment. It is recommended that campuses document the specialized skills of the retired annuitant for audit purposes.

Note: There is no provision in the law to allow a retired annuitant to "volunteer" hours while employed.

Calculating Employment Limits

To calculate employment limits under the relevant Government Code sections, different methods are used for academic, 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% 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. These terms apply to FERP participants who are instructional faculty unit employees or counselor faculty unit employees. Note that under the terms of the CBA, a faculty member who works full time for one semester has exhausted his/her employment eligibility for that academic year. A faculty member who works full time for one quarter may, with permission of the President receive additional employment subject to the overall 90 day (720 hour) limit.

For FERP appointments on a 12-month or 10-month basis: These terms apply to librarians (10 month or 12 month appointments) and counselor faculty unit employees in 12-month appointments. These employees are limited to a total of 960 hours of employment or 50% of the regular time base in the fiscal year prior to retirement, whichever is less. Since an appointment of 50% time base over a full twelve months would exceed 960 hours the campus must monitor the time actually worked and end the appointment once the maximum number of hours has been reached.

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% of the hour's methodology maximum (time base maximum) whichever 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

Retired 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. The law excludes CSU compensation from Social Security taxation for retired annuitants receiving retirement benefits through CalPERS.

If eligible for CalPERS retiree medical and/or CSU basic retiree dental benefits and voluntary enrollment into vision, retirees continue to receive these benefits while working as retired annuitants. Retired annuitants are ineligible for holidays, sick leave, vacation or any *employee* leave or benefit program. Exceptions exist for FERP participants who are eligible for the benefits set forth in HR/Benefits 2004-08 and the CSU CFA CBA.

Retired annuitants may contribute to the CSU 403(b) Tax Sheltered Annuity Plan and the Savings Plus 401(k) and 457 Plans subject to applicable payroll cut-off deadlines and IRS plan maximums as well as a number of voluntary benefit plans if they participated during active employment.

Penalties for Exceeding Restrictions

If a retired annuitant works in excess of the time allowed under the applicable Government Code, or prior to the expiration of the 180 day wait period, the retired 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 retired annuitant and campus also are subject to payment of retirement contributions for the wages earned during the period of employment. Lastly, the member and employer may be required to reimburse CalPERS for administrative expenses incurred in responding to the investigation and resolution of the unlawful employment.

Campuses must have in place a process for capturing CalPERS membership/retirement status before the employee begins employment. This can be accomplished through a number of actions. Recommended steps include asking about CalPERS membership and retiree status in pre-hire check-in paperwork, reviewing the prospective employee's employment history through the State Controller's Office PIMS system and reviewing myCalPERS for membership status.

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.

[CalPERS Circular Letter 200-002-14](#), dated January 14, 2014, titled Post Service Retirement Employment Requirements: Public Employees' Pension Reform Act of 2013 (PEPRA, Assembly Bill 340), Senate Bill 1021 & Senate Bill 13 provides an overview of the laws governing post-retirement employment and the consequences of unlawful employment to retiree and employers. A summary of the regulations follows:

1. Bona Fide Separation in Service Retirement:

- Normal Retirement Age – 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 member's benefit formula age which is dependent upon the members' retirement formula (e.g., age 55 for the 2% @ 55 formula, age 60 for the 2% @ 60 formula and age 62 for the 2% @ 62 formula). If there is more than one formula applicable to the retirement, the normal retirement age is the highest benefit formula age. The bona fide separation is required of CalPERS by the Internal Revenue Code tax regulations in order to maintain the federal tax qualified status.

Bona fide separation must meet both of the following conditions:

- 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.
- There must be a 60 calendar day separation from employment per Government Code section 21220.5. The 60 calendar day bona fide break and the 180 day wait period can be met concurrently.

2. Emergency Hiring Exceptions – Allows for employment of a retired member under normal retirement age for emergency situations (e.g., floods or earthquakes) as defined by Government Code section 8558.
3. Retiree Compensation – The compensation paid to retirees 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 per month, to equal an hourly rate. Retirees cannot receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.
4. Limited Duration Employment – Retirees cannot be hired into vacant permanent or regular staff positions except as an interim appointment under Government Code section 21221(h), regardless of whether the position is part-time or full-time. Retirees should be hired into retired annuitant designated positions only. A retired annuitant appointment should have a beginning date and an end date. A retiree can be hired to perform work of limited duration, meaning extra help work such as the elimination of a backlog, to perform special project work, or to perform work in excess of that which regular staff can do. Limited duration work does not mean an indefinite appointment to a permanent part-time position.
5. Retiree Skills – There should be some evidence in the retiree's work history that he or she has previous experience and the skill set needed to perform the desired work.
6. Independent Contractors/Consultants/Contract Employees – Generally, retirees engaged as true independent contractors, consultants or retained through third party employers, whose employment does not meet the California common law employment test, are not subject to the retirement law requirements. If however, the employment constitutes a California common law employment (employer-employee) relationship, the employment is subject to the retirement law requirements regardless of its characterization. As noted above, 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. It is therefore critical that employers consider the common law employment test factors when considering the use of a retired annuitant.

7. Unemployment Insurance - Campuses are to exclude from hiring retirees who have collected unemployment insurance compensation during the 12-month period prior to an appointment eligible under Government Code sections 21224, 21227 or 21229, if the retiree received any unemployment insurance compensation arising out of prior employment subject to any of these Government Code sections with any public employer. Furthermore, a retiree who accepts an appointment after receiving unemployment insurance compensation pursuant to any of these provisions must terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to these sections for a period of 12 months following the last day of employment. The retiree shall not be subject to Section 21202 or subdivision (b) of Section 21220 (reinstatement provisions). Technical Letter [HR/Benefits 2004-30](#) provides additional information regarding Government Code 21224; however, the law was subsequently expanded to include Government Code sections 21227 and 21229. The provisions of [HR/Benefits 2004-30](#) remain in effect and cover all three Government Code provisions.

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 Margaret Merryfield at (562) 951-4503. Questions related to staff or management should be addressed to Human Resources Management at (562) 951-4411. This memorandum is also available on Human Resources Administration's web page at: <https://csyou.calstate.edu/Policies/HRPolicies/Forms/>.

Resources:

For additional information about post-retirement employment for individuals with a CalPERS service retirement you can review the CalPERS publication "A Guide to CalPERS Reinstatement From Retirement" located on their website at www.calpers.ca.gov or you can contact CalPERS directly toll free at 888-225-7377 to request a copy.

Attachment
AJ/BR/bg

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 and GC Section 7522.56 - 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 and GC 7522.56 as a result of previous employment under this section with the same employer. (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. Prohibits employment of a retiree who received unemployment insurance compensation during the 12-month period prior to an appointment eligible under GC 21227 as a result of previous employment under this section with the same employer. (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 and GC section 7522.56 - 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 21229 as a result of previous employment under this section with the same employer. (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).
- 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.

Post Retirement Employment Employee Communication Letter for FERP Participants

Date XX, 2017

To be sent by campuses via mail to home address or email

Re: Restrictions on Faculty Early Retirement Program (FERP) Participation for Individuals with CalPERS Retirement Formulas of 2% at age 60 or 2% at age 62

Dear Dr. XXXXXX,

You are receiving this letter because you are a CalPERS member whose retirement formula is either 2% at age 60 or 2% at age 62. These two retirement formulas apply to individuals who were hired between 1/1/2011 and 12/31/2012 (2% at age 60) or on or after 1/1/2013 (2% at age 62).

The collective bargaining agreement between the California State University and the California Faculty Association states that eligible tenured faculty members who have reached the age of 55 may participate in the FERP. However, this language pre-dates the 2011 and 2013 changes to retirement formulas. State and federal law place additional restrictions on post-retirement employment for individuals who have not reached "normal retirement age", which tracks with the retirement formula age. As a consequence, you will not be eligible to enter the FERP until you reach the age of your retirement formula (age 60 or 62). Please keep these new restrictions in mind as you plan for the future.

If you have questions about your retirement formula or retirement benefits, please contact your campus Benefits Office. If you have questions about the Faculty Early Retirement Program, please contact your campus Faculty Affairs office.