



## Pension & Health Benefits Committee

# Agenda Item 6a

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**September 14, 2021**

**Item Name:** Proposed Regulation for the Definition of Limited Duration Employment

**Program:** Employer Account Management Division

**Item Type:** Action

### **Recommendation**

Approve staff's recommendation to pursue the proposed regulation defining Limited Duration Employment.

### **Executive Summary**

The attached proposed regulation is necessary to clarify what is considered "limited duration" employment as stated in Government Code (GC) sections 7522.56, 21224, and 21229 for retired persons serving after retirement and section 571(a)(3) of Title 2 of the California Code of Regulations (CCR) for employees required by their employer or governing board or body to work in an upgraded position or classification. The California Public Employees' Retirement Law (PERL) and the California Public Employees' Pension Reform Act of 2013 (PEPRA) do not explicitly define "limited duration" employment for either situation. By proposing this regulation, CalPERS seeks to explicitly define "limited duration" employment and to provide clarity and uniformity for CalPERS, its members, CalPERS-covered employers, and other stakeholders by ensuring the consistent use of the term "limited duration."

### **Strategic Plan**

This agenda item supports the 2017-22 CalPERS Strategic Plan, Risk Management Goal to cultivate a risk-intelligent organization and the objective to enhance compliance and risk functions throughout the enterprise.

### **Background**

Working after retirement statutes were first introduced in 1955. In 1969, the Legislature passed Assembly Bill (AB) 258 which introduced the phrase "limited duration." AB 258 did not define "limited duration" employment and the AB 258 bill analysis did not indicate the legislative intent of the phrase "limited duration." Subsequently, there have been several amendments to the working after retirement statutes, and currently, three statutes in the

PERL and PEPRAs address “limited duration” employment after retirement – GC sections 7522.56, 21224, and 21229.

In 1994, CalPERS promulgated CCR section 571 to delineate an all-inclusive list of special compensation to be reported to CalPERS to comply with SB 53. CCR section 571(a)(3) identifies Temporary Upgrade Pay as reportable special compensation paid to employees “who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.” CCR section 571(a)(3) does not define “limited duration” employment and the rulemaking file does not indicate the intent of the phrase “limited duration.”

## **Analysis**

The proposed regulation would define “limited duration” as a limit of 24 consecutive months per appointment for retired persons serving after retirement, with an option of two extensions of 12 consecutive months per extension upon approval from the CalPERS Board of Administration. Based on CalPERS’ data, between fiscal year (FY) 2009-10 through FY 2018-19, 53% of retired persons working after retirement concluded their appointment within 24 months. An additional 22% of retired persons working after retirement concluded their appointment between 24 and 48 months. The proposed regulation further defines a working after retirement appointment of limited duration as:

- A position involving work that is substantially different from work that the retired person performs after retirement in another position for the same CalPERS-covered employer, or
- A position for a different CalPERS-covered employer from any previous CalPERS covered employer the retired person performed work for after retirement.

As a result, the proposed regulation does not limit the number of all “limited duration” appointments a retired person may serve in, it eliminates the ambiguity in how long a retired person may serve in a “limited duration” appointment, and it defines what a working after retirement appointment of limited duration is. The proposed regulation also requires CalPERS-covered employers to notify CalPERS of the appointment end date, which shall not exceed 24 consecutive months from the appointment start date, and any changes to the appointment end date. For current working after retirement appointments, time served prior to the effective date of this proposed regulation would not count towards the time limit. The appointment end date for current working after retirement appointments shall not exceed 24 consecutive months from the effective date of this proposed regulation. This end-date reporting requirement is in addition to CalPERS-covered employers’ already existing obligation to report working after retirement appointments to CalPERS.

To meet the business needs of CalPERS-covered employers, the proposed regulation includes an option of two extensions of 12 consecutive months per extension, after the conclusion of the initial appointment of 24 consecutive months. CalPERS will grant the extension(s) of 12 consecutive months if the following conditions are met:

- The CalPERS-covered employer certifies the reason the work required under the appointment cannot be performed satisfactorily by a non-retired employee and that its governing body (for contracting agencies and school employers) or Trustees (for the California State University) approved the appointment extension at a public meeting,

which cannot be on a consent calendar, or that the Department of Human Resources (for state employers) approved the appointment extension, and

- CalPERS receives the approved extension request for review by the end date of the initial appointment for the first extension request, or by the end date of the first extension for the second extension request, as applicable.

Furthermore, the retired person cannot continue to serve in the same working after retirement appointment beyond the initial appointment of 24 consecutive months, or beyond the first extension of 12 consecutive months where that extension has been granted by CalPERS, as applicable, until an extension request is approved by CalPERS.

The proposed regulation would also define “limited duration” for temporary upgrade pay appointments as a limit of 24 consecutive months per appointment. Based on CalPERS’ data, between July 2011 and September 2020, 99% of temporary upgrade pay appointments concluded within 24 months. The proposed regulation further defines a temporary upgrade pay appointment as an appointment that must be immediately subsequent to a permanent appointment held by an individual for the same upgraded position or classification. This definition clarifies that the temporary upgrade pay appointment only pertains to an employee who is temporarily appointed to an upgraded position or classification that was vacated by the previous incumbent. As a result, the proposed regulation does not limit the number of temporary upgrade pay appointments an employee may serve in, it eliminates the ambiguity in how long temporary upgrade pay can be reported to CalPERS for pension purposes for each appointment, and it defines what a temporary upgrade pay appointment is.

### **Budget and Fiscal Impacts**

The proposed regulatory action is technical. CalPERS does not anticipate that it will impose any direct budget or fiscal impacts to the State. CalPERS expects to absorb the administrative costs related to reviewing and approving extension requests for working after retirement appointments within the existing budget and resources.

### **Benefits and Risks**

The proposed regulation is necessary to explicitly define “limited duration” employment. Adoption of this regulation will benefit CalPERS-covered employers by providing clear definitions of the “limited duration” employment when referring to retired persons serving after retirement and temporary upgrade pay appointees. “Limited duration” employment is not intended to be indefinite and thus must have an end date.

Adopting this regulation would clarify the meaning of “limited duration” employment and provide uniformity for CalPERS, its members, CalPERS-covered employers, and other stakeholders by ensuring consistent use of the term.

### **Attachments**

Attachment 1 – Text of Proposed Regulation

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