

FINAL STATEMENT OF REASONS

Proposed Amendment to Section 574 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Definition and Reporting of Full-Time Employment

UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons is still valid and relevant, but nonsubstantial changes have been made to the Economic Impact Assessment within the Initial Statement of Reasons and to the text of the proposed amended regulation.

The Economic Impact Assessment, Creation or Elimination of Jobs within the State of California, found on page five of the Initial Statement of Reasons, should be updated to read:

The proposed regulatory amendment ~~is not intended to~~ **will not** create or eliminate any jobs within the State of California. The proposed regulatory amendment serves only to define how to determine a classified member's hourly, daily, and monthly FTE payrates and provide clarity and uniformity for CalPERS, its classified members, and CalPERS-covered school employers in reporting a classified member's full-time payrate to CalPERS.

Section 574(c)(1) was modified to incorporate specific language from the already referenced Government Code section 20630 delineating the compensated time the member is excused from work that is included in the number of work days and hours in the work day. The intent has not changed from the original text and this change does not alter the regulatory effect of the proposed provision.

SUMMARY OF REGULATORY EVENTS

A Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register, File Number Z-2024-0405-02, on April 19, 2024. The 45-day comment period commenced on April 22, 2024, and closed on June 6, 2024.

CalPERS received two public comments within the 45-day comment period, summarized below: an email from Christine Winterle from Palomar College and an email from Cindy Livers from Riverside County Office of Education.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL PUBLIC NOTICE PERIOD OF APRIL 22, 2024 THROUGH JUNE 6, 2024

Christine Winterle submitted Comments 1.1 through 1.3 summarized below on behalf of Palomar College.

Definition of “Work Days”

Comment 1.1 Summary:

The comment pertains to the definition of “work days” and whether the work days include paid holidays.

Comment 1.1 Response:

The proposed amended regulation references Government Code (GC) section 20630 when describing work days. Per GC section 20630, compensation includes payment for time worked during normal working hours as well as paid time off, including but not limited to holidays, sick leave, and vacation.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation addresses how to calculate classified members’ full-time equivalent (FTE) payrates and does not provide a new definition of “work days” but references current GC.

Impact of Working Less Than 12 Months

Comment 1.2 Summary:

The comment expresses concern regarding the impact of working less than 12 months and requests consideration for the work year of those members.

Comment 1.2 Response:

The proposed amended regulation describes how school employers determine FTE payrates for purposes of reporting to CalPERS, regardless of whether the classified member’s earnings are based on a 40-hour work week. By incorporating a classified member’s annual base salary, number of work days per year, and number of hours in a work day, the FTE calculations defined in the proposed amendment take into consideration classified members that work less than 12 months per year and/or less than 40 hours per week.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation is intended to address how school employers calculate classified members’ FTE payrates, including those classified members who work less than 40 hours per week and 12 months per year.

Reporting Payrate

Comment 1.3 Summary:

The comment contains a question about reporting payrate for exempt employees and whether CalPERS is requesting a monthly or daily payrate.

Comment 1.3 Response:

For purposes of reporting a classified member’s FTE payrate, there is no differentiation between exempt and non-exempt classified members. Exempt or non-exempt employees’ payrates may be reported on an hourly, daily, or monthly basis, so long as the payrate reported is the FTE payrate and calculated as described in the regulation language.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation defines how to determine a classified member's hourly, daily, and monthly FTE payrates.

Cindy Livers submitted Comments 2.1 and 2.2 summarized below on behalf of Riverside County Office of Education.

Impact of Working Varying Number of Work Days Per Year

Comment 2.1 Summary:

The comment expresses concern that the conversion factor of 173.3333 when calculating a classified member's monthly FTE payrate may impact contributions, affect fairness, and raise potential "gift of public funds" issues.

Comment 2.1 Response:

The proposed amended regulation describes how school employers determine FTE payrates for purposes of reporting to CalPERS, regardless of whether the classified member's earnings are based on a 40-hour work week. To calculate a classified member's monthly FTE payrate, the proposed amended regulation takes into consideration that GC section 20636.1 defines full-time employment as 40 hours per week and there are 52 weeks in a year, which is equivalent to 173.3333 hours per month (40 hours per week x 52 weeks per year ÷ 12 months per year = 173.3333 hours per month). Using a single, uniform conversion factor of 173.3333 in the proposed amended regulation is necessary and consistent with the intent of GC section 20636.1 to standardize reporting among school employers and eliminate classified members potentially being treated inequitably because of employer discretion in reporting. The proposed amended regulation ensures school employers report correct payrates to CalPERS and makes no changes to contribution requirements or reporting requirements for classified members' earnings. CalPERS does not make gifts of public funds; CalPERS provides only those benefits required by the Public Employees' Retirement Law (PERL). The proposed amended regulation is consistent with the requirements imposed on CalPERS by the PERL.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation is intended to address how school employers calculate classified members' FTE payrates, including those classified members who work less than 40 hours a week and varying number of work days per year, consistent with the requirements of GC section 20636.1.

Impacts on Equal Payment Method

Comment 2.2 Summary:

The comment expresses concern that the proposed amended regulation may create difficulties with reporting FTE payrates for school districts who use an equal payment method for classified school members.

Comment 2.2 Response:

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation does not affect the equal payment reporting

method or otherwise change reporting requirements for classified school members' earnings. The proposed amended regulation describes how school employers determine classified members' FTE payrates for purposes of reporting to CalPERS under GC sections 7522.34, 20630, 20635.1, 20636.1, and 20967.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT PUBLIC HEARING

CalPERS allowed interested parties to request a public hearing from April 22, 2024 to May 22, 2024. However, no such requests were made, and therefore a hearing was not scheduled.

REASONS FOR REJECTING ANY PROPOSED ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The proposed regulatory amendment will not impact small businesses because it will only apply to CalPERS, CalPERS-covered school employers, and classified members of CalPERS, and CalPERS did not receive any proposed alternatives that would lessen any adverse economic impact on small businesses.

ALTERNATIVES DETERMINATION

Following the 45-day comment period, CalPERS reviewed and considered each comment received and did not make any changes to the proposed amended regulation. CalPERS determined that no alternative it considered would be more effective in carrying out the purpose for which the amended regulation is proposed, as effective and less burdensome to affected private persons than the proposed regulatory amendment, or more cost effective to affected private persons and equally effective in implementing the statutory policy or provision of law. Supporting information for this determination is reflected in CalPERS' responses to the comments received during the comment period set forth above. The proposed amended regulation was determined to be the most transparent and consistent means of providing clarity to CalPERS-covered school employers and classified members of CalPERS regarding how to determine a classified member's hourly, daily, and monthly FTE payrates.

LOCAL MANDATE DETERMINATION

The proposed amended regulation does not impose any mandate on local agencies or school districts.