

Office of Audit Services



CalPERS

Public Agency Review

City of Tehachapi

**Employer Code: 0522
CalPERS ID: 3088953028
Job Number: P13-019**

September 2014



California Public Employees' Retirement System
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September 19, 2014

Employer Code: 0522
CalPERS ID: 3088953028
Job Number: P13-019

Hannah Chung, Finance Director
City of Tehachapi
115 South Robinson Street
Tehachapi, CA 93561

Dear Ms. Chung:

Enclosed is our final report on the results of the public agency review completed for the City of Tehachapi (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Phyllis Miller
PHYLLIS MILLER, Acting Chief
Office of Audit Services

Enclosure

cc: City Council, City of Tehachapi
Greg Garrett, City Manager, City of Tehachapi
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Tehachapi (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and the Agency's contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) identified the following findings during its review. Details are noted in the results section of this report beginning on page two.

- Pay schedule did not meet all of the requirements of CCR Section 570.5.
- Special compensation was not reported as required.
- Compensation was not reported as earned.
- Incorrect payrates and earnings were reported.
- Unused sick leave was overstated.
- Eligible part-time employees were not enrolled into CalPERS membership.
- Retired annuitants were unlawfully employed.
- Elected Officials were not offered optional membership.

OAS recommends the Agency comply with applicable sections of the California Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with appropriate CalPERS divisions to resolve the findings identified in this report.

SCOPE

Effective January 1, 1964, the Agency contracted with CalPERS to provide retirement benefits for fire, police and miscellaneous employees. By way of its agreement with CalPERS, the Agency agreed to be bound by the terms of its contract, and the Public Employees' Retirement Law (PERL). The Agency agreed to make its employees members of CalPERS subject to the provisions of the PERL.

As part of the Board approved plan for fiscal year 2013-14, OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records and processes from July 1, 2011 through June 30, 2013. The employees selected were not subject to the Public Employees' Pension Reform Act of 2013. The on-site fieldwork for this review was conducted on November 20, 2013. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all of the requirements of the CCR.

Condition:

The Agency's pay schedule did not identify the position title and payrate for every employee position such as the City Attorney, Assistant Engineer, and Community Outreach Coordinator. In addition the Agency's pay schedule listed the City Manager position, but did not show a payrate. Instead, the payrate was listed as "Per Contract."

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule.

Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws.
- Identify the position title for every employee position.
- Show the payrate as a single amount or multiple amounts within a range for each identified position.
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually.
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website.
- Indicate an effective date and date of any revisions.
- Be retained by the employer and available for public inspection for not less than five years.
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1).

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Recommendation:

The Agency should ensure its pay schedule meets all of the CCR requirements.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636 (a), § 20636 (b)(1), § 20636 (d)

CCR: § 570.5

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2: The Agency did not report special compensation as required by the CCR.

Condition:

- A. The Agency did not report Uniform Allowance as special compensation. Specifically, the Agency provided a yearly Uniform Allowance of \$100.00 for the purchase of pants for Public Works, Water, Sewer, and Airport employees as stipulated in the Agency's Employee Personnel Manual. However, the Agency did not report the Uniform Allowance as special compensation. In addition, the Agency provided shirts to these employees as stipulated in the Agency's Employee Personnel Manual. However, the Agency did not report the monetary value for the purchase of the uniforms as special compensation. Further, the Agency's Employee Personnel Manual did not indicate the monetary value of the uniforms provided as required by the CCR.
- B. The Agency provided Police Officers uniforms consisting of shirts and pants. The Agency did not report the monetary value of the required clothing and did not contain the uniform provision in a written labor policy or agreement for Police Officers. All items of special compensation must be contained in a written labor policy or agreement. Government Code Section 20636(c)(6) requires that the monetary value for the purchase, rental and/or maintenance of required clothing be reported as special compensation.
- C. The Agency did not report Holiday Pay as special compensation. Specifically, the Agency did not report Holiday Pay earned by two Police Officers who worked on a holiday. Police Officers worked in positions that required scheduled staffing without regard to holidays. The Agency compensated the two officers at one and one half the rate of pay for working on February 18, 2013. However, the Agency did not report the Holiday Pay as special compensation. In addition, the Agency's Employee Personnel Manual included a provision to provide Holiday Pay, but did not specify the amount and was not approved and adopted by the Agency's governing body. Government Code Section 20636(c)(6) requires that Holiday Pay be reported as special compensation.
- D. The payrate and earnings for one employee included School Resource Officer pay. Special compensation must be reported separately from payrate, but only if it meets the criteria listed in CCR Section 571. The School Resource Officer pay was not contained in a written labor policy or agreement as required under CCR Section 571, and therefore was not reportable compensation.

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Reportable special compensation is required to be contained in a written labor policy or agreement with conditions for payment including amounts indicated, available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, and not final settlement pay.

Recommendation:

The Agency should report Uniform Allowance, the monetary value for the purchase of uniforms, and Holiday Pay as special compensation.

The Agency should ensure special compensation items are contained in a written labor policy or agreement as required by the CCR.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 571

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3: The Agency did not report compensation as earned.

Condition:

The Agency did not report compensation as earned. Specifically, the Agency's payroll reflected a pay period of June 12-26, 2013, but the Agency reported the earned period as June 16-30, 2013. In addition, the Agency paid an optional member for a period of May 29, 2013 through June 24, 2013, but the Agency reported an earned period of June 16-30, 2013. When compensation is reported to CalPERS, the Agency should identify the pay period in which the compensation was earned regardless of when paid.

Recommendation:

The Agency should ensure compensation is reported as earned.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20630 (b)

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4: The Agency reported incorrect payrates and earnings.

Condition:

- A. The Agency incorrectly reported a monthly payrate and earnings of \$7,073.00 in the pay period ending June 30, 2013. The Agency incorrectly calculated a three percent COLA on a salary of \$6,867.00 instead of the authorized salary of \$6,667.00.
- B. The Agency incorrectly reported the payrate for the City Attorney, an optional member. Specifically, in the pay period ending June 30, 2013, the Agency incorrectly reduced the City Attorney's payrate by \$133.33 for the social security modification and reported a monthly payrate of \$5,782.67. The social security modification should only be applied for purposes of calculating the member's normal contributions. The Agency should report the normal monthly rate of pay for each position pursuant to Government Code Section 20636(b)(1), and a publicly available pay schedule pursuant to Government Code Section 20636(d).

Payrate is an important factor in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

Recommendation:

The Agency should ensure payrates and earnings are correctly reported.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20630, § 20636
CCR: § 570.5

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5: The Agency incorrectly reported unused sick leave.

Condition:

The Agency incorrectly certified the number of unused sick leave days for a retiring member. Specifically, the retiree had a balance of 26.48 days of unused sick leave; however, the Agency incorrectly certified 52.97 days. As a result, the Agency overstated the number of sick leave days for the retiree.

Recommendation:

The Agency should ensure the correct amount of unused sick leave for retiring members is reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to the retired member's account pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20965

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6: The Agency did not enroll eligible temporary/part-time employees as required.

Condition:

The Agency did not enroll eligible temporary/part-time employees into membership as required. For instance, one part-time employee completed 1,000 hours of work as of the pay period ending April 25, 2013 and should have been enrolled into membership no later than the first day of the first pay period in May 2013. However, the Agency did not enroll the eligible employee until July 1, 2013. In addition, another employee completed 1,000 hours of work as of the pay period ending May 10, 2013 and should have been enrolled into membership no later than the first day of the first pay period in June 2013. However, the Agency did not enroll the employee until October 11, 2013. For employees who completed 1,000 hours within a fiscal year, membership shall be effective no later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed, pursuant to Government Code Section 20305.

Recommendation:

The Agency should monitor the hours worked by temporary/part-time employees to ensure the employees are enrolled when membership eligibility requirements are met.

The Agency should work with CASD to make any necessary adjustments to the active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20044, § 20160, § 20305

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7: The Agency unlawfully employed retired annuitants.

Condition:

A retired annuitant worked over the 960 hour threshold during fiscal year 2012-13 without reinstatement from retirement. Specifically, the retired annuitant worked 1,252 hours during the fiscal year, exceeding 960 hours in pay period ending April 10, 2013, and was not reinstated from retirement.

Another retired annuitant was continuously employed in a vacant Agency position as Chief Building Inspector since December 22, 2008. Although the Agency indicated they intended to fill the vacant position, the position was never filled. As a result, the retiree was determined to be unlawfully employed as the appointment was a permanent appointment rather than an interim appointment during recruitment for a permanent appointment or an appointment to perform work of a limited duration as required under Government Code Sections 21221(h) and 21224.

Government Code Section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. The Government Code states that any retired member employed in violation of this article shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law, pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

The Government Code also states that any public employer that employs a retired member in violation of this article shall pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

Recommendation:

The Agency should work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

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Criteria:

Government Codes: § 20160, § 21202, § 21220, § 21221(h), § 21224

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8: The Agency did not offer optional membership enrollment to Council Members.

Condition:

The Agency did not advise Council members of their optional CalPERS membership rights. An elective officer is excluded from membership unless the officer files with the Board an election in writing to become a member. An elective officer includes persons elected to a City Council or County Board of Supervisors.

Recommendation:

The Agency should work with CASD to ensure elective officials are advised of their CalPERS optional membership rights when first elected and file the appropriate election in writing with CalPERS for those who elect to become members.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20322

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original signed by Phyllis Miller
PHYLLIS MILLER, CPA, CIA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Manager
Alan Feblowitz, CFE, Manager
Terry Heffelfinger, Auditor
Emma Shaw, Auditor

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APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2011 through June 30, 2013.

SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - City Council minutes and City Council resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee hours worked records
 - Agency payroll information including Summary Reports and CalPERS listings
 - Other documents used to specify payrate, special compensation, and benefits for employees
 - City ordinances as necessary
 - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

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- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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APPENDIX B

AGENCY RESPONSE

Build Up. Play Up. Work Up. Explore Up. **Live Up.**



July 22, 2014

California Public Employees' Retirement System
Office of Audit Services
Margaret Junker, Chief Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

Dear Ms. Margaret Junker,

Upon review of the draft report, we agree with your findings and recommendations. We will be expecting a response with guidance pertaining to each area based on these findings.

We appreciate your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Hannah Chung". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Hannah Chung, Finance Director